Hearing Date and Time: June 18, 2015, at 10:00 a.m.
Objection Date and Time: June 5, 2015, at 4:00 p.m.

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-and-

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	**Case No. 08-13555 (SCC)**
Debtors.	:	**(Jointly Administered)**

OPPOSITION OF HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P. TO MOTION OF LEHMAN BROTHERS HOLDINGS INC. FOR FURTHER EXTENSION OF THE PERIOD TO FILE OBJECTIONS TO AND REQUESTS TO ESTIMATE CLAIMS

TO THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE:

Highland CDO Opportunity Master Fund, L.P. ("Highland"), by and through its counsel, Cole Schotz P.C., hereby files this opposition ("Opposition") to the motion of Lehman Brothers Holdings Inc. ("LBHI") for an order further extending the period to file objections to and

requests to estimate claims [Docket No. 49709] (the "Second Motion"), and respectfully states as follows:

I. INTRODUCTION

1. In a woefully unsubstantiated attempt to further delay adjudication of and distribution on account of the Highland Claim (as defined below), LBHI asks this Court for another 18-month extension of time within which to object to the Highland Claim. In so doing, LBHI totally ignores the requirements of transparency and accountability that Judge Peck imposed on the claims review process in this case and tramples on the rights of legitimate creditors. Indeed, since the November 22, 2013 hearing on LBHI's first motion to extend the time within which to object to claims, LBHI has been anything but transparent and has done nothing to advance the ball with respect to the Highland Claim. The striking lack of progress is exacerbated by the fact that LBHI completed its Rule 2004 discovery regarding the Highland Claim almost two years ago.

2. By the Second Motion, LBHI claims that it needs another 18 months, on top of the 18 months granted by Judge Peck in November 2013 (and a total of more than five years since confirmation of the Plan), to determine whether to object to the Highland Claim. Audaciously, the second extension request, like the first one, is without prejudice to further extensions of time to object to the Highland Claim. Given that, for almost two years, LBHI has had all the information it needs to determine whether it will pay or object to the Highland Claim, a further extension of the September 6, 2015 claims objection deadline (the "Current Claim Objection Deadline") is highly prejudicial to Highland and simply not warranted under the facts.

3. Accordingly, the Second Motion should be denied as to the Highland Claim.[1] In the event the Court considers granting the Second Motion, Highland respectfully requests that the Court permit Highland to file its own motion to allow the Highland Claim at any time after the Current Claim Objection Deadline (as defined below).

II. BACKGROUND

4. On May 31, 2007, Highland and Lehman Brothers International (Europe) ("LBIE") entered into a Global Master Repurchase Agreement (2000 version), as amended and supplemented from time to time (the "GMRA"), pursuant to which LBIE sold certain securities to Highland, and simultaneously agreed to repurchase those securities at a later date and an agreed price.

5. LBIE's obligations under the GMRA were unconditionally guaranteed by LBHI (the "Guarantee").

6. On September 15, 2008 and at various times thereafter, LBHI and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief pursuant to Chapter 11 of Title 11, United States Code. On December 6, 2011, the Court entered an order [Docket No. 23023] confirming the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors*, dated December 5, 2011 (the "Plan").

7. Pursuant to Section 9.1 of the Plan, the deadline (the "Original Claims Objection Deadline") by which LBHI had to file objections to and requests for estimation of claims was March 6, 2014 (more than two years after confirmation of the Plan), unless otherwise extended by the Court.

[1] For the avoidance of doubt, Highland opposes the relief requested by the Motion only as it relates to the Highland Claim. Highland takes no position with respect to the balance of the relief requested by the Motion.

8. On September 18, 2009 - almost six years ago - Highland filed a proof of claim in this bankruptcy case [Claim No. 16838] based upon the Guarantee (the "Highland Claim"), which claim has a current balance of approximately $5 million. The Highland Claim constitutes *prima facie* evidence as to the validity and amount of Highland's claim against LBHI. See Fed. R. Bankr. P. 3001(f).

9. In January 2013, counsel for LBHI issued a subpoena *duces tecum*, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, demanding that Highland produce documents related to the Highland Claim. Highland was forced to dedicate human resources and to retain counsel to respond to that subpoena. On February 12, 2013, Highland served its Objections and Responses thereto.

10. On March 1, 2013, counsel for LBHI issued a subpoena *ad testificandum*, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, seeking an examination of the person at Highland with the most knowledge of the Highland Claim. Highland again was forced to dedicate personnel and retain counsel to respond to that subpoena. On August 20, 2013, LBHI deposed a Highland representative in Dallas, Texas for approximately two hours.

11. On November 1, 2013, LBHI filed a motion to extend the Original Claims Objection Deadline for 18 months [Docket No. 40939] (the "First Motion"). Several creditors, including Highland, filed objections to the First Motion. Highland's objection to the First Motion [Docket No. 41089] (the "First Highland Objection") is attached as **Exhibit A**.

12. The Court held a hearing on the First Motion on November 22, 2013. Although Judge Peck entered an order granting the First Motion and extending the Original Claims Objection Deadline to September 6, 2015 [Docket No. 41286] (the "Claims Objection Deadline

Extension Order"), he made several critical observations regarding the claims objection process in this case:

> … It would be more desirable if this process were more transparent in offering parties within the class of not yet allowed claims or not yet disallowed claims to understand how determinations are being made as to who comes first or who gets earlier treatment or who gets deferred ….

See Transcript of November 22, 2013 hearing ("Tr."), attached as **Exhibit B**, page 83, lines 19-24.

> …So what I'm going to suggest in the context of granting this relief is that there also be a better window into the process so that parties who are anxious to have their claims resolved might have some ability to understand why it's not yet timely for their claim to be resolved or it may be timely and for there to be some broad-based work plan available for public dissemination or private dissemination with confidentiality to the extent that this may be sensitive information, as to how the plan administrator intends, over the period of time between March of 2014 and September, 2015, to use that time in an efficient and fair way….

See Tr., p. 84, lines 18-25; p. 85, lines 1-4.

> …So there's no reason, just because you're a squeaky wheel for you to get the grease, but there should be a process in which parties within classes and categories have reasonable expectations as to how their claims are going to be addressed over time.

See Tr., p. 85, lines 17-21.

13. Additionally, the following exchange occurred between Judge Peck and counsel for Highland at the November 22, 2013 Hearing:

> Ms. Volkov: Your Honor … I'm wondering whether to help the transparency it makes sense to have a status conference sometime down the road so that aggrieved party [sic] can be heard to the extent that the transparency is not as transparent as the parties would like it to be and just to keep the process moving along.

> The Court: I don't think that's a terrible idea because it provides some accountability as to how this concept [of transparency] will be, in fact, implemented, and my suggestion is that we simply have a status conference on claims procedures and priority as an agenda item, say in three months.

See Tr., p. 89, lines 20-25; p. 90, lines 1-4.

III. LEGAL ARGUMENT

14. Although Highland does not seek to minimize LBHI's efforts heretofore with respect to the claims objection process, the fact remains that more than 18 months have passed since entry of the Claims Objection Deadline Extension Order (not to mention almost six years since the filing of the Highland Claim), and no progress whatsoever has been made with respect to the adjudication of the Highland Claim. It is incomprehensible why LBHI still cannot declare its intentions with respect to the Highland Claim given its possession of all the requisite information to object (or not to object) to the Highland Claim for almost two years. Unfortunately for Highland, the same reasons for denying the First Motion exist today and even more so necessitate a denial of the Second Motion as to the Highland Claim. Those reasons are as follows:

15. First, LBHI has had more than ample time to evaluate in a meaningful way the merits of the Highland Claim. Highland filed the Highland Claim almost six years ago, LBHI served its first subpoena on Highland in January 2013 (2½ years ago), and LBHI deposed Highland's representative in August 2013 (almost two years ago). Therefore, LBHI's request for an additional 18 months (beyond the 3 that LBHI still has through September 6, 2015) to address the Highland Claim is untenable.

16. Second, LBHI asserts in the Second Motion that the requested extension "will inure to the benefit all parties in interest" because, for example, it will allow LBHI "to continue

to engage in negotiations . . . to consensually resolve claims without judicial intervention." See Second Motion, ¶ 17. LBHI then audaciously contends that "… granting the relief requested will not prejudice any creditor because the Plan Administrator maintains reserves for liquidated Disputed Claims pending Distribution." Id. This naked assertion could not be farther from the truth as to Highland. Indeed, as set forth in the First Highland Objection and as the situation still stands today, LBHI has never engaged in any "negotiations" with Highland or made any attempt to "resolve [the Highland Claim] consensually" — other than boldly requesting that Highland withdraw the Highland Claim. Given LBHI has had almost two years since the close of Rule 2004 discovery to attempt to settle the Highland Claim and has failed to do so, its claimed need for an additional 18 months (beyond the 3 that LBHI still has) to resolve the Highland Claim is highly suspect.

17. Third, it was and continues to be unreasonable for LBHI to, on the one hand, subject Highland to discovery and compel it to hire counsel to assist in the process, while, on the other hand, seek another 18 month extension to object to the Highland Claim. If LBHI's request is granted, Highland would have to wait in excess of seven years since the filing of the Highland Claim to first find out whether LBHI even has an issue with that claim. This result would be highly prejudicial to Highland, especially considering that LBHI is in a position today (and has been for years) to address the Highland Claim.

18. Finally, LBHI's mere conclusory assertions do not justify a further delay in the adjudication of the Highland Claim. Since the November 22, 2013 hearing on the First Motion and Judge Peck's imposition of transparency and accountability to the claims objection process, LBHI has been anything but transparent and accountable. No reports have been filed. No status conferences have been held. No settlement overtures have been made. No communications have

been undertaken. In short, Highland has no idea whatsoever why its claim is being pushed to the end of the line and when it will be addressed by LBHI. This perennial "in the dark" situation in which Highland finds itself is unjust, wholly inconsistent with Judge Peck's remarks and should be remedied by a denial of the Second Motion as to the Highland Claim.

IV. CONCLUSION

WHEREFORE, for the reasons set forth herein, Highland respectfully requests that the Court: (i) deny the Second Motion as to the Highland Claim or, alternatively, permit Highland to file a motion to allow the Highland Claim at any time after the Current Claim Objection Deadline; (ii) and grant Highland such other relief as the Court deems just and appropriate under the circumstances.

Dated: New York, New York
June 5, 2015

Respectfully submitted,

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EXHIBIT A

Hearing Date and Time: November 22, 2013, at 10:00 a.m.
Objection Date and Time: November 14, 2013, at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	**Case No. 08-13555 (JMP)**
Debtors.	:	**(Jointly Administered)**

OPPOSITION OF HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P. TO MOTION OF LEHMAN BROTHERS HOLDINGS INC. FOR EXTENSION OF THE PERIOD TO FILE OBJECTIONS TO AND REQUESTS TO ESTIMATE CLAIMS

TO THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE:

Highland CDO Opportunity Master Fund, L.P. ("Highland"), by and through its counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., hereby files this opposition ("Opposition") to the motion of Lehman Brothers Holdings Inc. ("LBHI") for an order extending the period to file objections to and requests to estimate claims [Docket No. 40939] (the "Motion"), and respectfully states as follows:

I. INTRODUCTION

1. Lest there be any doubt, LBHI has already analyzed the basis and nature of the Highland Claim (as defined below). Indeed, counsel for LBHI first contacted Highland with a

subpoena regarding the Highland Claim nearly one year ago, and traveled halfway across the country more than three months ago — with a lengthy deposition outline and box full of documentary exhibits in hand — to take a two-hour deposition relating solely to the Highland Claim. Thus, LBHI cannot legitimately contend that it has not formulated a position with respect to the Highland Claim.

2. By the Motion, however, LBHI claims that it needs another 18 months to address the Highland Claim. Given that LBHI already has all the information needed to do so, LBHI surely should be able to determine whether it will pay or object to the Highland Claim on or before the current deadline of March 6, 2014 (the "Existing Claim Objection Deadline") — a date that is more than four months away. Requiring Highland to wait another 22 months just to find out for the first time whether LBHI has a problem with the Highland Claim is highly prejudicial to Highland.

3. Accordingly, the Motion should be denied as to the Highland Claim.[1] In the event the Court considers granting the Motion, however, Highland respectfully requests that the Court permit Highland to file a motion to allow the Highland Claim at any time after the Existing Claim Objection Deadline.

II. BACKGROUND

4. On May 31, 2007, Highland and Lehman Brothers International (Europe) ("LBIE") entered into a Global Master Repurchase Agreement (2000 version), as amended and supplemented from time to time (the "GMRA"), pursuant to which LBIE sold certain securities

[1] For the avoidance of doubt, Highland opposes the relief requested by the Motion only as it relates to the Highland Claim. Highland takes no position with respect to the balance of the relief requested by the Motion.

to Highland, and simultaneously agreed to repurchase those securities at a later date and an agreed price.

5. LBIE's obligations under the GMRA were unconditionally guaranteed by LBHI (the "Guarantee").

6. On September 15, 2008 and at various times thereafter, LBHI and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief pursuant to Chapter 11 of Title 11, United States Code. On December 6, 2011, the Court entered an order [Docket No. 23023] confirming the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors*, dated December 5, 2011 (the "Plan").

7. Pursuant to Section 9.1 of the Plan, LBHI's deadline to file objections to and requests for estimation of claims is March 6, 2014, unless otherwise extended by the Court.

8. On September 18, 2009, Highland filed a proof of claim in this bankruptcy case, assigned Claim No. 16838, based upon the Guarantee (the "Highland Claim").[2] The Highland Claim constitutes *prima facie* evidence as to the validity and amount of Highland's claim against LBHI. See Fed. R. Bankr. P. 3001(f).

9. In January 2013, counsel for LBHI issued a subpoena *duces tecum*, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, demanding that Highland produce

[2] On September 15, 2008, LBIE was placed into administration in the United Kingdom (the "LBIE Administration"), thereby defaulting under the GMRA. On or about December 11, 2008, Highland submitted a claim in the LBIE Administration in the amount of $10,026,061, plus interest and expenses, stemming from LBIE's breach of the GMRA (the "Highland UK Claim"). Although the Guarantee does not contain an election of remedies provision, Highland's counsel is in regular contact with the administrator of LBIE (the "Administrator") regarding the status of the Highland UK Claim. In fact, Highland has provided documents and other requested information to the Administrator. The Administrator has not indicated that it has any issues with the Highland UK Claim. For the avoidance of doubt, in the event Highland receives a distribution from this case on account of the Highland Claim, it agrees that any "duplicate" distribution it might receive in connection with the LBIE Administration on account of the Highland UK Claim will be assigned and turned over to LBHI.

documents related to the Highland Claim. Highland was, thereby, forced to dedicate personnel and retain counsel to respond to that subpoena. On February 12, 2013, Highland served its Objections and Responses thereto.[3]

10. On March 1, 2013, counsel for LBHI issued a subpoena *ad testificandum*, also pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, seeking an examination of the person at Highland who is most knowledgeable of the Highland Claim. Once again, Highland was, thereby, forced to dedicate personnel and retain counsel to respond to that subpoena. On August 20, 2013, LBHI deposed a Highland representative in Dallas, Texas for approximately two hours.[4] Counsel for Highland interposed almost no objections during the entire deposition.

11. Since the August deposition, Highland has received no substantive communications from LBHI — other than an unsolicited and unsubstantiated request, on the eve of the filing of the Motion, that Highland consider withdrawing the Highland Claim. See October 31, 2013 email attached as **Exhibit A**. Significantly, that email states that "Lehman is contemplating its next steps with regard to the Highland claim."

[3] Around this time, Highland's counsel suggested to LBHI's counsel that discovery be put on hold pending resolution of the Highland UK Claim. LBHI's counsel rebuffed this suggestion, asserting that the claim objection process in this case must proceed regardless of what happens in the LBIE Administration.

[4] Before the August deposition, Highland attempted to obviate the need for and cost of a deposition by offering LBHI an Affidavit attesting to the facts sought by way of the Rule 2004 subpoena. LBHI rejected Highland's proposal.

III. LEGAL ARGUMENT

12. The Motion should be denied as to the Highland Claim for three reasons.

13. First, LBHI cannot credibly contend that it has not had sufficient time to adequately assess the merits of the Highland Claim. Highland filed the Highland Claim more than 4 years ago, LBHI served its first subpoena on Highland nearly one year ago, and LBHI deposed Highland's representative more than three months ago. Therefore, it is unreasonable for LBHI to request or require an additional 18 months (beyond the 4 that LBHI still has) to address the Highland Claim.

14. Second, LBHI asserts in the Motion that the requested extension "will benefit all creditors and parties in interest" because, for example, it will allow LBHI "to continue to engage in meaningful negotiations . . . to resolve claims consensually, obviating the need to file objections." See Motion, ¶ 25. Although Highland cannot speak to "all creditors and parties in interest," LBHI's assertion is simply untrue as to Highland. Indeed, LBHI has never engaged in any "meaningful negotiations" with Highland or made any attempt to "resolve [the Highland Claim] consensually" — again, other than boldly requesting that Highland withdraw the Highland Claim. Therefore, there is simply no reason why LBHI needs an additional 18 months (beyond the 4 that LBHI still has) to do something that it has had ample time to do already, but has elected not to do.

15. Third, without having the benefit of a contested matter which would spell out the basis for any dispute of the Highland Claim, Highland dedicated human and financial resources obliging LBHI's document demands and deposition subpoena. It is unreasonable for LBHI to, on the one hand, subject Highland to discovery and compel it to hire counsel to assist in the process, while, on the other hand, seek another 18 months to object to the Highland Claim. If LBHI's request is granted, LBHI as the plan administrator will have had **3.5 years** to assess the

merits of and object to the Highland Claim, and — Highland would have to wait **7 years** to first find out whether LBHI even has an issue with the Highland Claim. This result would be highly prejudicial to Highland, especially considering that LBHI is undoubtedly in a position today, and certainly will be in four months from now, to address the Highland Claim once and for all.

16. At bottom, the time is ripe for LBHI either to object to or allow the Highland Claim without further delay.

IV. CONCLUSION

WHEREFORE, for the reasons set forth herein, Highland respectfully requests that the Court: (i) deny the Motion as to the Highland Claim or, alternatively, permit Highland to file a motion to allow the Highland Claim at any time after the Existing Claim Objection Deadline; (ii) and grant Highland such other relief as the Court deems just and appropriate under the circumstances.

DATED: November 14, 2013

Respectfully submitted,

COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.

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By: */s/Michael D. Warner*

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EXHIBIT A

From: Larson, Jennifer [jennifer.larson@weil.com]
Sent: Thursday, October 31, 2013 7:12 PM
To: Sklar, Adam
Cc: Brown, Robert
Subject: Highland LBHI guaranty claim

Adam,

As Lehman is contemplating its next steps with regard to Highland's claim, I wanted to reach out to you to see whether Highland has reconsidered withdrawing its claim. If Highland is willing to withdraw, we are happy to send over the standard form and take care of filing it.

Kind regards,
Jennifer

Weil

Jennifer D. Larson

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EXHIBIT B

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555 (JMP)

- x

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.,

Debtors.

- x

CASE NO.: 08-01420 (JMP)(SIPA)

In the Matter of:

LEHMAN BROTHERS, INC.,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 22, 2013

10:06 a.m.

B E F O R E :

HON JAMES M. PECK

U.S. BANKRUPTCY JUDGE

Notice of Status Conference for Pending Claims Related to Restricted Stock Units and Contingent Stock Awards [ECF No.: 41210]

Debtors' One Hundred Seventeenth Omnibus Objection to Claims [ECF No. 15363]

Debtors' One Hundred Seventy-Third Omnibus Objections to Claims [ECF No. 19399]

Motion of Lehman Brothers Holdings Inc. for Extension of the Period to File Objections to and Requests to Estimate Claims [ECF No. 40939]

Caisse Des Depots Et Consignations' Second Motion for Entry of An Order to Permit a Late-Filed Proof of Claim [ECF No. 39240]

Plan Administrators Objection to Classification of Securities Law Portion of Claim of Federal National Mortgage Association [ECF No. 40244]

Debtors' Ninety-Seventh Omnibus Objection to Claims (Insufficient Documentation) [ECF No. 14492]

Debtors' One Hundred Twenty-Fifth Omnibus Objection to Claims (Insufficient Documentation) [ECF No. 16079]

Debtors' Objection to Proof of Claim No. 66099 Filed by Syncora Guarantee, Inc. [ECF No. 20087]

Two Hundred Ninety-First Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 27380]

Three Hundred Ninetieth Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 34044]

Three Hundred Ninety-Fourth Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 34728]

Objection to Claim No. 62723 of Banesco Holdings CA [ECF No. 37327]

Plan Administrators' Objection to Proof of Claim No. 33514 Filed by Frank Tolin, Jr. [ECF No. 37839]

Four Hundred Eighteenth Omnibus Objection to Claims (No Liability Claims) [ECF No. 38010]

Four Hundred Twenty-First Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 38018]

Plan Administrators' Objection to Proof of Claim No. 33605 Filed by Sanford A. and Tina A. Mohr [ECF No. 39348]

Four Hundred Thirty-Second Omnibus Objection to Claims (No Liability Derivative Claims) [ECF No. 39570]

Motion of EFETnet B.V. to Authorize Late-Filed Proof of Claim and/or Permit Amendment of Informal Proof of Claim Against Lehman Brothers Commodity Services, Inc. [ECF No. 40004]

Motion to Classify and Allow the Claim Filed by the Federal Home Loan Mortgage Corporation (Claim No. 33568) in LBHI Class 3 [ECF No. 40066]

Plan Administrators' Objection to Proof of Claim No. 33325 Filed by Arthur A. Boor and Joan Boor [ECF No. 40292]

Four Hundred Fortieth Omnibus Objection to Claims (Insufficient Documentation Claims) [ECF No. 40472]

Four Hundred Forty-First Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF: 40473]

Four Hundred Forty-Third Omnibus Objection to Claims (Valued Claims) [ECF No. 40475]

Four Hundred Forty-Fifth Omnibus Objection to Claims (No Liability Claims) [ECF No. 40479]

Trustee's Sixty-First Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6130]

Trustee's Sixty-Second Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6131]

Trustee's Sixty-Sixth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6157]

Trustee's Seventy-Sixth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6295]

Trustee's Eightieth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6341]

Trustee's Eighty-Eighth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6566]

Trustee's Ninety-Fifth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6682]

Trustee's Ninety-Seventh Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6684]

Trustee's Ninety-Eighth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6699]

Trustee's One Hundred Sixth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6811]

Trustee's One Hundred Twelfth Omnibus Objection to General Creditor Claims (Subordinated Claims) [LBI ECF No. 6847]

Trustee's One Hundred Thirteenth Omnibus Objection to General Creditor Claims (Subordinated Claims) [LBI ECF No. 6865]

Trustee's One Hundred Fourteenth Omnibus Objection to General Creditor Claims (Subordinated Claims) [LBI ECF No. 6866]

Trustee's One Hundred Eighteenth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6906]

Trustee's One Hundred Twentieth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 6918]

Trustee's One Hundred Twenty-FOurth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 7008]

Trustee's Objection to the General Creditor Claim of Lawrence Fogarazzo, et al. [LBI ECF No. 7078]

Trustee's One Hundred Thirty-Fifth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 7185]

Trustee's One Hundred Thirty-Eighth Omnibus Objection to General Creditor Claims (Subordinated Claims) [LBI ECF No. 7264]

Trustee's One Hundred Thirty-Ninth Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 7279]

Trustee's One Hundred Forty-Second Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 7335]

Trustee's One Hundred Forty-Third Omnibus Objection to General Creditor Claims (Non-LBI Employee Claims) [LBI ECF No. 7336]

Trustee's One Hundred Forty-Sixth Omnibus Objection to General Creditor Claims (Insufficient Documentation Claims) [LBI ECF No. 7382]

Trustee's One Hundred Forty-Seventh Omnibus Objection to General Creditor Claims (Subordinated Claims) [LBI ECF No. 7388]

Trustee's One Hundred Forty-Eight Omnibus Objection to General Creditor Claims (No Liability Claims) [LBI ECF No. 7399]

Trustee's Motion for an Order (I) Confirming the Trustee's Denial of SIPA Customer Status to Claren Road Credit Master Fund, Ltd. and (2) Subordinating the Claim [LBI ECF No. 7539]

Transcribed by: Sherri L. Breach and William J. Garling

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P R O C E E D I N G S

THE COURT: Good morning. Be seated, please.

MR. HORWITZ: Good morning, Your Honor. Maurice Horwitz from Weil, Gotshal & Manges on behalf of Lehman Brothers Holdings, Inc. as plan administrator.

The first item on today's agenda is a status conference relating to certain pending claims related to restricted stock units and contingent stock awards.

For that matter I'll turn the podium over to Ralph Miller.

THE COURT: Mr. Miller, good morning.

MR. MILLER: Good morning, Your Honor. Ralph Miller from Weil, Gotshal & Manges here on behalf of Lehman Brothers Holdings, Inc. which I will call LBHI or the plan administrator.

THE COURT: Okay. There are a number of attorneys assembling as you're speaking.

MR. MILLER: Yes, Your Honor. With me are Denise Alvarez and Theresa Brady and we -- I guess you might like to take appearances or know who is here from the other firms.

THE COURT: I'll take appearances. I'm also going to ask for appearances for those attorneys or individuals who are on the telephone and appearing telephonically at this status conference.

So let's start with the people who are in the room.

MR. SCHAGER: Good morning, Your Honor. It's Richard Schager for claimants under the RSU and CSA dispute. I'm here with Lisa Solomon and Gene Kaplan from Kaplan Landau, and also behind the main bench are Bob Michaelson from Rich Michaelson Magaliff and my associate, Andrew Goldenberg. There are a couple of pro se's here also, Your Honor, whom I will not introduce.

THE COURT: Okay. I think we should have everybody identify themselves before we get started. Those people who are pro se's and in the room should just give me your name, and those who are pro se's who are represented on the telephone should do the same, but after we finish in the courtroom.

So --

MR. SCHAGER: And my apology -- I'm sorry. My apologies, Your Honor. There are two other lawyers here representing claimants. Steve Abramowitz from Vinson & Elkins and Will Knox from -- I'm sorry. I've forgotten his firm.

MR. KNOX: Paduano & Weintraub.

MR. SCHAGER: Sorry. Paduano & Weintraub.

THE COURT: Okay. And apparently not everybody is choosing to be up in the soft seats for some reason, but

everybody's free to sit down.

Do you want to enter your appearances?

MR. KENNY: Arthur Kenny. I'm a pro se claimant.

MS. HOU: Andrea Hou (ph). I'm a pro se claimant.

THE COURT: Okay. Now those who are appearing by telephone. Is there anyone appearing by --

MR. JACOBSON: Lars Jacobson, pro se claimant.

MS. BOGERT: Lisa Bogert (ph), pro se claimant.

MR. CARRAGHER: Dan Carragher from Day Pitney representing Fabio Liotti.

THE COURT: Okay. I -- I think that's everybody.

MR. COHEN: Darian Cohen, pro se claimant.

THE COURT: It's not everybody. Now we have everybody?

THE CLERK: Mr. (indiscernible).

MR. O'BRIEN: Your Honor --

THE COURT: One more in the courtroom.

MR. O'BRIEN: Barry O'Brien, pro se claimant.

THE COURT: Okay.

I think we've now heard from everybody.

Mr. Miller, I just wanted to have a record of who was participating in this status conference.

MR. MILLER: Yes, Your Honor. And the introductions illustrate the first issue I wanted to discuss with the Court, which is that this started with a large

number of claimants in various different categories, and has now been narrowed down to a very focused group. And I wanted to briefly report to the Court on the progress that has been made, where we are and what we believe are the three issues necessary for the Court to help us with an order to get a fair and prompt resolution of what is left.

If I might, first, as the Court recalls, there are -- were originally about 3,680 of these claims that related to restricted stock units, which we call RSUs or conditioned stock awards. They're called CSAs. They're very much the same thing except the CSAs were international.

About 3,400 of those have been reclassified as equity because of no objection. About 236 remained after the reclassification process. The Court set up a procedure by which certain of the claimants could elect to participate in discovery. About 100 chose to do so. We call those participants because they did participate in the year-long discovery process we've had. Most participants had counsel, but some were pro se. About another 130 or so did not participate in discovery. The vast majority of those are pro se, but some of those have counsel.

So we have categories of both participants who have counsel and are pro se and pro se parties who did not participate and parties with counsel who did not participate.

LBHI has been working diligently with the represented participants to build an evidentiary record as the Court asked us to. More than 30,000 pages of documents were produced. A download cite was created, system was set up. The represented participants wanted to try to negotiate a stipulation. The Court saw some correspondence about that. Between June and October we devoted substantial effort to that and came up with a 20 page stipulation of facts with 20 exhibits, which the Court has approved.

There was a day-long deposition taken under Rule 30(b)(6) of a witness from LBHI dealing mostly with accounting, tax and other technical issues having to do with RSUs and CSAs. There have been discussions about hearing procedures. Those have evolved some because we had hoped that the stipulations and other developments would narrow the issues, and I believe they have.

There have also been some tentative settlements reached with a very narrow class of these claimants. That will not substantially affect the procedure going forward. But we don't believe there are further settlement prospects on the horizon for a little over 200 claimants that remain, and it's going to be necessary for us to agree to disagree and let the Court guide us on the reclassification issue.

There are three main open issues for a hearing, Your Honor.

First, there is the question of whether some claimants should be excluded from the first hearing and there should be some sort of a secondary procedure where other claimants who were not in the first hearing would come forward.

This issue is the most significant and it impacts the other two. It's the position of LBHI that we ought to have one hearing; that throughout this process, as I will explain, the pro se parties have been given full opportunity to either elect to participate in discovery or to get the benefits of that discovery and they're going to have an opportunity to brief, to appear and to do other things. And for administration purposes, it's really important to get this all resolved at once instead of have it continue to string on indefinitely.

That leads into the second issue, Your Honor, which is when there might be a hearing set;

And the third issue, which is far less important, is a disagreement over the time and sequence for oral arguments during the hearing, an issue that I think the Court might well defer until a little closer to the hearing.

I would like to briefly talk about these three issues.

With regard to participation, LBHI has made every effort to invite pro se claimants as well as represented

claimants to either join in the discovery process, if they wish to participate, or if they wish to sit out and receive the benefit to have an opportunity to present their case at the hearing.

Our proposed hearing protocol would allow briefing in which the parties with lawyers, the represented participants, would file their briefs first. There would be a delay. Pro se claimants who wish to join in some of those or want to add special facts would have an opportunity to do that. LBHI would respond. The briefing would eventually have the input from everyone.

At the hearing we have proposed that although the represented participants who have the best understanding of the evidentiary record would put on their case initially after the opening by LBHI and the framing of the objections. The pro se claimants who wish to would have an opportunity to participate. At the conclusion we believe there would be a complete record and the Court would be able to make a decision on the reclassification issue.

We recognize that a somewhat different procedure arguably was followed in the case known as the TBD case which was an LBI proceeding and I believe Mr. Schager may try to address that.

We believe that's distinguishable, Your Honor. We've set out in a letter to the Court some of the

distinctions. But, briefly, those were pre-selected cases. They were matters where there was not a full evidentiary record and the hearing was not open to all parties to participate. In that case, the Court allowed subsequent submissions. I understand there actually weren't any, but from parties who wanted to add something to the record.

We don't believe that that procedure fits the facts and circumstances here because we do have a full evidentiary record, as the Court asked us to develop it, and everyone has had an opportunity to participate. We believe that we can effectively do the hearing.

The claimants had indicated they would like two days. We hope it can be done more quickly than that, but certainly if two days are allowed, there ought to be ample time with the Court's management and guidance to get whatever input you want from all the participants.

If there is one two-day hearing, we believe it is most efficient for plan administration if that could possibly be scheduled by no later than early February. I mean, the Court has two dates in late January and two dates in early February which are fine with LBHI and we believe the briefing can be completed before those dates.

The represented claimants favor February 25 and 26. Although this may not seem like much time delay, it does have an impact on the fifth distribution which comes

out near the end of March and has to be calculated in the middle of March, essentially. And if there is a hearing in early February and the Court takes several weeks to resolve it, and if the Court should find that some or all of the remaining claims should be reclassified as equity, there would then be time for the 14 day appellate time to run.

And assuming that some or all of those were not appealed, there would then be a group of these claims that would come back as equity and they would free up funds that are now being held back in reserve that can't be used in the fifth distribution. There's about a little over $25 million of cash. The reserves are much larger because there are multiple of that that's being held back for the possibility these are not reclassified.

We don't believe that that's practical and so, essentially, that $25 million is locked up for at least another six months till the following distribution, if this is delayed much beyond early February.

So that's why we think that a hearing date is important in early February, if possible.

The third issue is really a question of who opens and who closes. We don't think there is much doubt about the fact that LBHI has the prima facie obligation to frame its objection and should at least open. We recognize that all parties should put on their evidence. We think that

LBHI should also close, but, frankly, the way the Court would handle closing is something we think the Court could determine when you've heard the evidence, you've seen how the hearing has played out and you decide what you want. I'm sure, based on the Court's experience, you'll give everybody an opportunity to rebut and have their say and there will be a full and fair explanation of the arguments that people want to make.

We have submitted a hearing protocol, Your Honor. We would ask that you make any modifications that you may feel are appropriate and enter an order that would give us guidance. We do think that a single hearing is the most important issue and that there's a practical way to do that. And we hope that that single hearing can be set no later than starting on February the 4th.

I would be happy to take any questions, Your Honor. Otherwise that's I think the status as LBHI sees it.

THE COURT: Okay. I think it makes sense to consider question one; in other words, whether there should be one or two hearings as a threshold item for scheduling because one hearing on one or two days may be different from a case management perspective than two hearings on one or two days.

And so I would like to understand a little bit more about LBHI's position as to why it makes the most sense

administratively and is also fair to all the claimants for this to be a one-day -- or a one-hearing process, however many days it takes.

MR. MILLER: Well, Your Honor, would you like for me to respond --

THE COURT: Yes.

MR. MILLER: -- to that question?

THE COURT: I would like you to.

MR. MILLER: Yes. I would be happy to, Your Honor.

This is actually a relatively simple legal issue which has to exist in a factual background. We think the discovery has not shown essentially any differentiation between the way claimants have been treated as far as the information they received, the way the RSUs and the CSAs were presented to them, the way they were accounted for.

We think -- and I don't want to argue the issue, Your Honor, but we think that all the -- all the facts show that this has always been treated as equity. It was part of an equity awards program. It was accounted for under the accounting rules that deal with equity awards. The recipients actually had rights to vote as equity in certain circumstances. The value was always keyed to changes in stock value. We think that's common to all the parties.

And under those circumstances, we don't think that

there is any need to have individualized proof of what people thought or were told or believed or wished for because, frankly, everything was done through plan documents. And there's quite a lot of tax overlay that these plans have to be administered uniformly in order to receive the tax treatment that they receive. And a very scrupulous effort was made to publish all of the guidance. There was a committee that helped with this.

And we believe that the fact stipulation that has been entered, which is largely a stipulation on documents, says this plan was adopted on such and such a day. It says this, it says that. Here's a true copy. It is essentially giving the Court a complete evidentiary record and, of course, it's available to all the parties.

Under those circumstances, we think that these individual claimants have very little differentiation. We know of essentially known that is going to require them to put on individualized cases.

And we think that it -- it's a difficult issue to understand, and if you separate it between some people who hear the entire story and have the sophistication that the represented claimants do have at this point, who participated in discovery, if that explanation is not provided to people in a secondary hearing, there's going to be a great deal of confusion and great inefficiency.

So having everyone together at one time to see the briefing, to submit the briefing to the Court, and for those who want to participate pro se, many of whom are not lawyers, to sit through and understand what the lawyers who are acting for claimants have presented and to see what issues the Court is asking, that's going to simplify the case. And, frankly, it's hard for us to believe that many pro se claimants are going to have a whole lot that they're going to be able to add or change or do about that because we think the issues have been framed fully and completely.

If they do, we're happy to have an opportunity to do that and those can be broken out and can be dealt with.

But setting aside a separate hearing day, time and schedule, essentially from the standpoint of plan administration, creates a major issue because we then don't know how those are going to be resolved and we don't know, and it's not clear if the Court's going to want to rule on just the issues when it's heard one part of the hearing or whether the ruling would be deferred until there are two hearings.

But since I suppose somebody might make an argument different in the second hearing than the first hearing, there's a real possibility that the major legal issue would not be resolved. And, of course, the major legal issue, as you framed it before, is whether the Enron

case is going to be followed and whether there's anything that distinguishes these restricted stock units and conditional stock awards from the stock options that were at issue in that case. We believe there's not, but we believe that really is not a claimant specific issue. We believe that that's an issue that has to do with the programs.

So for --

THE COURT: Okay.

MR. MILLER: -- those reasons, we think it's one question. It's one set of facts. The facts vary little from year to year and so on, but it's essentially one common story, Your Honor, and we think it makes no sense to cut it into pieces.

And we think the -- frankly, in terms of fairness, we think the reason that the parties may want to cut it into pieces is that some believe that they may receive some advantage by going first and perhaps not having the distraction or issue of having others with them.

We don't think that's going to be the case, by the way. We think everybody will have a full and fair opportunity to present their case.

We also think from a standpoint of the fairness sense for the pro se claimants, they ought to feel like they've had to -- an opportunity to participate in the real hearing, the big hearing, the first hearing, the whole

process. And we're concerned that if you -- if you relegate them to a secondary process, they may not have the experience of participating in it.

And as Your Honor knows, these are all former employees of the Lehman Brothers' various entities. Many were not employees of LBHI because LBHI was the only one that had the stock. So you couldn't issue LBI stock or LBL stock or whatever. So LBHI had to have a program. It was -- it actually sold the stock as the record now shows to subsidiaries in the form of -- there was actually inter-company purchase of the RSUs by the subsidiaries.

But in any event, there's really no distinction. It was a unitary program and LBHI would like for its former employees and for the former employees of its affiliates to feel that they were treated fairly.

THE COURT: Okay.

MR. MILLER: Anything else, Your Honor, for LBHI?

THE COURT: Well, let me just react to something that you said.

It's my recollection from long ago when we had hearings on the RSUs and the CSAs and any number of pro se claimants came forward and spoke to me that each of them had a slightly different story to tell. And so one of the fundamental questions I have, because I'm not privy to the discovery that has taken place and I have not addressed the

stipulation of fact so I'm not sure if it's been filed with the Court or if I've had -- I have access to it. But I can tell you I haven't read it. So I am at a disadvantage in knowing what the facts show that the parties have agreed to.

But part of your presentation today tells me -- others may disagree with what you've said -- that if you look at the factual record as it has developed over time, at least from LBHI's perspective, individual differentiation of stories, claims, circumstances, whatever that may be has no bearing on the governing legal question of treatment of these claims, at least from LBHI's perspective.

So several questions:

First, does this suggest the possibility of dispositive motion practice with regard to all of these claims that would avoid an evidentiary hearing, or because of the presence of pro se claimants, is that procedure unworkable? That's question one.

And question two, if we were to have a single evidentiary hearing would it be possible in the estimation of LBHI to resolve all class claims at once, whether they're represented or unrepresented, regardless of where the employees may have been employed simply on the basis of legal argument, or are there factual distinctions applicable to individual claimants that would lead to different outcomes based upon the facts presented for each such

claimant?

MR. MILLER: Well, Your Honor, I would like to -- might I have a moment to consult with my partner, Ms. Marcus, and others, particularly on your first question.

As far as the second question, which I think I can -- can address, that requires a digression into one issue that was very prominent in the hearing that you had which we believe has been largely resolved by this partial settlement offer and arrangement that was made.

There are some claimants who spent a good deal of time talking at the first hearing on this about the fact that in 2008 commissioned salespeople had withholdings from their pay which -- for which RSUs were never issued. There was a partial issue of RSUs in 2008. Usually they're issued at the end of the year, but some were issued during the year.

The settlement that was offered was to that category of individuals who had withholdings for which RSUs were not issued. And these settlements are tentative. They have not been finalized by documents yet. I can tell you that all of the -- and some of the represented participants were not in that category. Unless someone was a commissioned salesperson who worked there in 2008, then they didn't have any claims in this category.

I -- without going into settlement

confidentiality, all of the -- all of the represented claimants that we've heard from and the participants who were in that category have accepted one of the two settlement options that we gave. So we think at least that issue is going to be greatly reduced. We have at least one that is still unclear as to whether it's going to be accepted or not. It has counsel. And we have some pro se's who didn't respond.

So that issue is now much less prominent in the case. There's actually, I think, nine or ten claimants that may have something on that issue.

If that issue remains and needs to be litigated, it has some individual component to it as we see it, and that's one of the reasons we made an offer and tried to deal with that issue as we felt it was a separate question.

Outside of that question and having to do with a -- the people who got RSUs and got CSAs we really don't think there's any individual distinction. And in terms of whether you could resolve this, we think that this issue that deals with sort of the very tail end of the program, sort of when the music stopped who had a chair, if you will, in 2008, we think that should be pushed until the rest of the issues are considered.

And we think that they can -- all issues can be resolved in one hearing, including that issue if it's

necessary for the Court to address it at that time, which LBHI still very much believes it comes -- it follows, essentially, the resolution of the first one. If the RSUs and CSAs were always equity, then we think a promise to get equity in the form of an RSU and CSA is still equity. But, nonetheless, that has some -- has some distinctions to it.

And so to explain the single hearing concept, we think that there is no doubt that by far the most important issue and the one that -- that the Court should - that we need really guidance on is whether the issued RSUs and the issued CSAs should be reclassified as equity. And we think that can certainly be resolved in a single hearing and we think that these other issues ought to be resolved in a single hearing largely based on what some pro se's we haven't heard from may say or do. That's a very small number left in terms of the amounts in controversy at this point.

THE COURT: Sounds like it's one and a half hearings.

MR. MILLER: All right, Your Honor. If that's helpful in number two.

As far as number one, I will say we can always try motion practice. The issue, of course, is if someone tries to file a declaration, say they want to create a fact issue, I mean, we've -- we've spent a lot of time and effort. The

Court suggested that you wanted evidence and we've tried to get evidence. I realize evidence could be presented in this form through the stipulation and other things. But with the overlay of the pro se's who it's difficult to know whether somebody is going to hurl in affidavits or something else that would make a summary judgment type procedure difficult to manage.

I think -- my personal belief, having spent time with it, that it's easier to set aside two days and maybe it's a day and a half, Your Honor -- it's like your hearing and a half -- and just kind of let everything come in, let the Court have the full record and see if we can't get this behind us.

But if you want us to do it with motion practice, obviously we will try to do that, Your Honor.

THE COURT: No. No. I'm not -- I'm not promoting it at all. I'm rather trying to understand what I've heard. And one of the things that you said was based upon an agreed factual record and evidence that should not be controversial because it should all be admissible and could be the subject of declarations and submissions, that very often is the basis for a summary judgment motion and argument.

But I'm also hearing you say that given the nature of the dispute and the nature of the claimants and their composition -- some being represented, some being pro se,

some being commissioned salespeople, some working for different Lehman entities -- that it may be more administratively convenient, not only for the parties, but for the Court to have an evidentiary hearing in which all parties can simply appear and be heard on the basis of some record that's already admitted. Is that my understanding of the position?

MR. MILLER: Well, Your Honor, we think that certainly that option should be preserved, and I think you should hear from some of the claimants' counsel.

THE COURT: I --

MR. MILLER: One of the things that they have told us that I'm aware of -- and I don't want to speak for him -- is that some of their clients want to testify live and tell you their story. And we don't really think -- we didn't take any depositions. We didn't think any discovery was necessary. We don't think that's going to change anything. But if people have a strong urge to do that, you know, that's a factor.

I -- it's always dangerous to suggest a procedure that has not been fully vetted, but let me propose to the Court that one option might be that LBHI could certainly file a motion for summary judgment or, in the alternative, a trial brief and support it with the record that LBHI thinks it has, and then everybody could be called upon to try to

respond to that and see -- if they think it shouldn't be a summary judgment, they can say why and if they think it should be a summary judgment, but it should be decided in their favor, they can say why. And all that could be briefed to coincide with the hearing schedule.

And if the Court looks at that and decides you've got a summary judgment, you can cancel the hearing, obviously as -- hopefully a little bit in advance so that people won't have to travel and resolve it as a summary judgment, then at that time you'll know who's responded, whether you have contested issues of fact, whether the summary judgment process has been followed as you might set it up, or you can go ahead and say, okay, we'll go ahead and have the hearing, or you can have a hearing on whatever is left.

I mean, in that sense you could find out what could be submitted by motion. I've certainly had trials in federal district court, for example, where the parties both file summary judgments and we went to trial and the Court said, I'm going to consider the summary judgments, and the Courts granted summary judgments sometimes halfway through trial.

So, I mean, it is possible to have a summary judgment procedure before the Court and also have a hearing scheduled.

And then one way or the other we're going to be done. Either the summary judgment works and you get to resolve it on summary judgment or the hearing is concluded.

But, again, I've not had a chance to vet that with my colleagues or my clients. But if the Court were interested in that, it seems to me, based on what I know about the facts in the record, that would be a practical thing that we could do.

THE COURT: Well, what I'm interested in -- and I'm going to hear from parties who are opposed to the notion of one hearing in a moment. But what I'm interested in is a procedure that works for this unique class of claimants and that also provides a mechanism for orderly disposition of the legal issues presented. I'm not trying to propose anything to make it more complicated. Instead, I'm just asking a question as to whether there's a way to make it less complicated.

And what I think I've heard you say is that conceivably there could be a summary judgment process here, but it's one that in all likelihood would prompt objections, factual assertions not in the stipulation, and requests for live testimony.

If that's all true, even before hearing from counsel for the claimant group, I see no reason to start a process that will not produce a ready outcome.

I'm simply -- I raised the question in the first place because you made references to legal issues that would govern the outcome more or less regardless of particular facts that might be asserted by individual claimants. In other word, a governing standard that would apply no matter what a claimant came in and said. That's what I was understanding you to be saying.

MR. MILLER: Well, Your Honor, I don't believe that the -- that we think there's any competent way that a claimant can vary the terms of the plans, all of which said they couldn't be varied. And so we don't know what the claimants are going to say.

I will stress, Your Honor, LBHI has always thought this was pretty simple. We think the Enron case controls it and we think this looks like equity. It was treated as equity. It functions as equity. It's equity.

The claimants have raised -- and this is their job -- a lot of the issues to try to make that more complicated and say, maybe it shouldn't be treated as equity, maybe it should be treated as something else. It's not clear to us, frankly, what different claimants are going to say it should be treated as or exactly how they're going to argue this because we don't have comprehensive briefing after their evidentiary record from the various represented claimants. We have nothing from the pro se claimants.

THE COURT: I know what they're going to say because I remember what they said last time. Many of them are going to say they had no choice in the matter. This was part of their compensation. It was a given that these RSUs represented part of what they worked for and their lawyers argue that it should be treated as employee compensation.

I understand what your argument is; that it's just equity and needs to be treated as equity. But I have a strong sense that the individuals who experienced what it was to be an employee of Lehman Brothers prior to the bankruptcy have a need to be heard, not just a need to respond to summary judgment papers or to submit letters. And that part of what this process is about is reconciliation on a personal level for those employees who feel that the bankruptcy rendered them victims.

I mean, there are plenty of creditor victims around the world, but the employees in question for the most part did not participate in any of the decisions of Lehman Brothers that led to its bankruptcy. In that sense, I recognize the psychological benefit to them, and perhaps also the ultimate legal benefit to them in having their day in court.

So I withdraw the reference to summary judgment or summary disposition. I don't think it's going to work here. But I'll certainly hear what counsel for the group has to

say on the subject and what any individuals wish to add.

MR. MILLER: Your Honor, I -- obviously, I don't want to speak for the claimants, but certainly we have received a message similar to what you just expressed in our dealing with them. And, again, LBHI will do this any way the Court wants us to do it. We are happy to submit a summary judgment conditionally, but we do believe that going through say a three or four-month discovery -- a summary judgment process, if it fails and then trying to get a hearing set is not in the best interest of plan administration.

A great deal of expense has been devoted by the estate to building this evidentiary record and to giving the claimants their day in court and the opportunity to develop their position. And while we tried to be economical about that, the fact that there are differing counsel and people without counsel has made that -- has made that more challenging.

And so the plan administrator would like to go ahead and sort of stop the bleeding in terms of the expense and also get resolution because, as Your Honor knows, there is -- there is an issue about extending the claims deadline. We're trying to get as many claims processed as fast as we can. This is a chunk that is not only taking time to get handled from an accounting standpoint, but it's taking

resources from the people who can handle claims calculating these things. Just a small settlement segment we did took a lot of calculating resources to try to get that done.

So the plan administrator would like to get a -- sort of a surer certain exit path to the discovery, to the cost, to the process, and we think a hearing is a way to do that and let people express their views.

So we appreciate that, Your Honor.

THE COURT: Okay. Let's give those who wish to speak regarding a one-hearing or two-hearing process and also my comments regarding summary disposition a chance to present their positions.

MR. SCHAGER: Thank you, Your Honor. Richard Schager for some of the claimants here who I won't identify, but I will say there are 48 that my firm represents out of the total of 78 claimants who are represented by counsel.

Your Honor, I appreciate your time today. I think we can already tell that the time taken today will come back in terms of a more efficient hearing or procedure that we follow. So thank you for this.

I was going to address the issue of the hearing day first, Your Honor. One thing on which we agree are the three issues that were open today. But if Your Honor prefers, I'll go directly to the issue of the participation of the pro se's.

THE COURT: Well, actually, what I was dealing with, and it may be that it's the wrong order, but it's the one that I picked, is whether we're talking about one hearing or two hearings. And once I know if we're dealing with one or two, we can then talk about dates.

MR. SCHAGER: Very good, Your Honor. And I will say this; that I think there is one sequence here that is -- will illustrate the issues that we have. I think at the outset I would say that the lawyers who represent claimants don't have a personal stake in whether the pro se's participate in the hearing or not. Some of us feel that it would be a more efficient hearing without the participation of the pro se's and others think that the pro se's should participate. As a group I'm afraid we don't have a position.

I think Your Honor knows from my correspondence that as one firm representing a certain number of claimants I have always felt that the hearing would be more efficiently done with just the represented parties as sort of a test case, if you would like, and I use that phrase "test case" advisably. The language that was -- that Mr. Miller quoted that was our so-called position, Your Honor is familiar with that language, of course, because we drew it from -- from your decision. And we thought that was an approach that the Court may wish to pursue.

In addition to that, Your Honor, I think it's fair to say that there was the representation that we have been negotiating this order for months. The fact is that we made a proposal at the end of July and there was no response until the very end of October. So over three months passed. There was even an interim memo from me to Lehman's counsel saying, hey, if you want a distribution in the spring, you better get on the ball and respond to this, and nothing happened.

So the three months passed and then a proposed order comes out saying, okay, here you go. Your brief is due in a week. Now you can smile and say, well, that's how lawyers deal with each other, but that statement also applied to the pro se's and that's really why I mention it now. To come out with an order on October 30 saying, pro se, your brief is due in a week is not a fair approach.

Now what's our concern about that, again, we obviously don't represent parties appearing pro se. But I think it's fair to say that we were not prepared to be part of a stipulated submission to the Court treating the pro se's this way.

So as much as I can say, Your Honor, is that some of us think the hearing would be run more efficiently without the participation of the pro se's. It's already complex by a couple of different groups represented and a

couple of different issues presented. And we have someone ready to speak to that.

The second issue, Your Honor, is that with a good number of pro se's out there saying that they're going to present their case in two hours, I think, is just not being fair to them. On that issue, Your Honor, I think I would defer to a couple of the pro se people who are here today.

I hate to beg the question, Your Honor, but we -- yes, we did raise the issue of how the pro se's would participate in the hearing. We did that largely because of the way the Court addressed the issue, we believe, in December of 2011 and we didn't want to be a party to something that was basically ramming something down the throats of the pro se's. But we don’t represent the pro se's and we are inclined to let them speak for themselves and to be guided by the Court's approach.

THE COURT: Okay.

MR. SCHAGER: Is that a fair statement, Your Honor?

THE COURT: Well, maybe I should -- maybe I should hear from certain of the pro se's because they're the ones who are most directly affected by the one hearing versus two hearing structure that we're discussing.

I'm hearing you say that you believe it would be more efficient for there to be a hearing in which only the

represented claimants participate, presumably the pro se's would be physically present because they would be very interested in the outcome. And you would then have a further hearing when they would appear and be heard, presumably having been educated by sitting through a process in which counsel has presented evidence and argument.

Therefore, from the perspective of the pro se's it seems to me this is a somewhat either burdensome or beneficial process depending upon how they view it because they either get to study in what amounts to the phase one approach of represented parties, go home, think about what they've heard and come back having been educated, so some may say that's a benefit, or some may say why should we be treated differently. The evidence is being presented at one time.

From the Court's perspective, the Court really needs to hear all the evidence within this not quite class action because it's just a bunch of individuals that are not really represented by counsel, and the finder of fact trying to deal with what Mr. Miller describes as one governing legal question presumably has to wait until the last witness has spoken in the second hearing, thereby burdening everybody equally.

So I think we have an imperfect structure no matter how this is to be decided. But I would be interested

in knowing how the pro se's who wish to be heard on this issue feel about it because they are the ones most directly impacted it seems to me.

The Court is going to hear it all in any event, whether it's heard in one or two days as one hearing or whether it's heard in one, two or four days as part of a longer bifurcated process. But, in effect, what you're really talking about, whether it's one hearing or two, is an order in which the proof and argument is being presented.

Effectively, it doesn't matter to me. I'm indifferent as long as the parties approve the structure and believe it to be fair because it's the same impact from my perspective.

What do the -- can I hear from some pro se's who wish to be heard on this? And if nobody has anything to say, I'll just decide it myself.

MR. KENNY: Arthur Kenny, Your Honor.

The -- I'm a commissioned salesman so I was kind of lumped together, you know, with the opening statements from counsel that you're talking about RSUs and CSAs, and then under questioning from Your Honor he acquiesced to the fact that, yes, there was another category, the commissioned salespeople who had commissions withheld. And so I'm in that category. And I just want to make sure that there is a differentiation which wasn't differentiated in the opening

statement by counsel this morning.

So, you know, I want to make sure that I'm heard. I want to -- you know, I'm very sensitive to the efficiency of the Court and while I've attended I've tried to, you know, be a fly on the wall and observe and learn, yet I still want to be heard as to the classification that I have for my particular situation which is similar to those of the other commissioned salespeople.

So, you know --

THE COURT: Are your claims part of this settlement that has been referenced by Mr. Miller?

MR. KENNY: I received an offer which was -- you had to respond --

THE COURT: I don't need to know the specifics of it.

MR. KENNY: No. I know the specifics, but there was a certain date which has expired. So if you didn't respond then you're -- you're continuing to go along.

Now --

THE COURT: Does that mean that you've rejected the proposal or does that mean --

MR. KENNY: I've rejected --

THE COURT: -- you just haven't gotten around --

MR. KENNY: Rejected --

THE COURT: -- to thinking about it?

MR. KENNY: No. Well, I've rejected the proposal in the sense that if I didn't respond by a certain time, then it was rescinded. Okay.

THE COURT: Don't you think it might be renewed if you were interested?

MR. KENNY: Well, renewed, you know, I didn't find it an acceptable settlement.

THE COURT: All right. Fine.

MR. KENNY: So it -- that was the case.

And the situation is that part of the settlements, there was two parts to a settlement. Without getting into particulars, but claimants would still go on even if they accepted the second part of the settlement. So it wasn't that they were extinguished and went to equity. Okay. There was a second part which would continue going forward.

THE COURT: It sounds to me -- and I don't need to know the specifics -- that part of the proposal deals with the withholdings; is that right?

MR. KENNY: Yes.

THE COURT: Okay.

MR. KENNY: Yes. Exactly.

THE COURT: So what do you think about one hearing versus two hearings?

MR. KENNY: I -- I honestly don't know. I mean, I just want to be heard in the efficiency of the Court. I'm

--

THE COURT: You don't care?

MR. KENNY: I really don't care. I want to be heard, but whether it's one or two, you know, I would, you know, leave it to the lawyers here who do have representation of other clients in my category.

THE COURT: Right.

MR. KENNY: So --

THE COURT: Okay. Are there --

MR. KENNY: -- they would be better judges.

THE COURT: Since you're indifferent --

MR. KENNY: No. No disrespect, sir.

THE COURT: Okay. Fine. Thank you very much.

MR. KENNY: Yes.

THE COURT: Since you're indifferent on the point, are there any pro se's who are present in court who care about this issue?

MS. HOU: Andrea Hou, Your Honor.

I guess what's important from a pro se's point of view is that, you know, we get the benefit of being better educated and also being heard. Again, it doesn't matter whether you have two day or four day or one day hearings. But I think it's important to keep in mind that there are 197 constituents and that these constituents are probably those with the least resources to help themselves through

the process. So we appreciate Your Honor's emphasis on making sure that, you know, we're educated -- better educated and heard through the process. That's -- that's, I guess, what's important.

THE COURT: Okay. Are there any pro se's on the telephone who wish to be heard on the issue?

MR. JACOBSON: Yes. Lars Jacobson, Your Honor.

You know, my gut feeling -- and my apologies if I speak freely here, but my gut feeling is I prefer to have a one-hearing format. My concern is in a bifurcated format is that we could very well be in a situation where the estate's counsel uses techniques that -- legal techniques that we're all unfamiliar with to, you know, muddle up the process, if you will. That concerns me.

Just as an example anecdotally -- well, not anecdotally, but just an example, I got my settlement offer Thursday of last week with the deadline being on Monday. I actually had a child on Tuesday, so it didn't really work. I had to do a number of different things to take a look at it, but that is just an example of what I perceive to be, you know, legal muddling, if you want to call it that.

So from my perspective, I would like to just kind of throw my hat in and say I would like one -- you know, one hearing, I guess, for everybody.

THE COURT: Okay. Anybody else on the telephone?

Okay. Here's what I think.

I think that it makes sense for there to be one hearing that is well coordinated. In practice it may turn out that the one hearing occurs in a Part A and a Part B, but we're going to have one hearing. Effectively, this structure is going to be one in which as issues are being presented by counsel in reference to represented claimants that touch on the interests of similarly situated pro se claimants, it would be most sensible for all of those factual issues to be heard at once rather than in parts.

And while I recognize that this imposes something of a burden on counsel for the represented group, counsel probably will need to think about how to coordinate presentations not only for their represented clients, but also with those pro se's that may be in the same class or that may have aligned interests so that there can be a coherent and efficient presentation of the record evidence.

So there will be one hearing and I impose what amounts to an extraordinary burden on all parties, including those represented and unrepresented, to work together so that you don't step on each other's toes.

Okay. Now we get to scheduling. And I have an observation that really goes to one of the things mentioned by Mr. Miller earlier.

I think it highly unlikely that a hearing in late

January or early February will result in a ruling that allows for freeing up the $25 million in reserve. And I think it is much more realistic to assume that that $25 million will be held for another six months. And so I don't believe that should be a factor that plays into scheduling, particularly since we are having a single hearing that requires a high degree of planning and coordination.

If that helps the parties reach agreement as to when the hearing should be scheduled, I suggest that the parties simply agree on that rather than have me decide the question. It should be a date that realistically accounts for the time needed to prepare, the time needed to coordinate, and briefing.

MR. KAPLAN: Your Honor, also as I recall when I spoke to chambers -- Eugene Kaplan. I represent the Newberger (ph) claimants.

When I spoke to chambers when I was given the dates in late February, there were three days actually available at that time. So it may be most efficient if Your Honor does have those three days, since we're now having this hearing with the pro se's to have the extra day available in case -- in case we spill over rather than at some other -- at some other point.

They were the -- it was the 24th, 25th and 26th or the 25th, 26th and 27th, I forget. But it was -- I was told

by your clerk that there was -- it was a three-day block there rather than a two-day block that was available.

MR. SCHAFFER: But, Your Honor, if I -- if I may comment there, my recollection is from Mr. Kaplan's correspondence that the Court said either the 25th and 26th of February or the 4th, 5th and 6th of March. It was the -- the three-day block was --

MR. KAPLAN: It was in March?

MR. SCHAFFER: -- in the first week of March.

MR. KAPLAN: It was March?

THE COURT: My suggestion is that parties not fixate on these dates. They were provided by my courtroom deputy not in consultation with me, and those dates do not necessarily represent reality in any event.

I think the parties should use their best judgment as to when it would be most convenient for a hearing to be held, and my courtroom deputy, in cooperation with others in the court, will endeavor to accommodate those dates.

Is there more on scheduling? There was -- I think what I would like the parties to do is to simply meet and confer and to develop an agreement.

And then what about opening and closing as an issue? That needs to be resolved now.

MR. SCHAFFER: Your Honor, Richard Schaffer speaking once again.

I think some of us, myself included, were surprised that this was be -- had become such a major issue.

MR. SCHAEFFER: Your Honor, Richard Schaeffer speaking once again. I think some of us, myself included, were surprised that this has become such an issue. I would remind the Court that there has been substantial -- were there omnibus objections. Lehman had at least two briefs in support of the omnibus objections as a group, as well as the documents that went in with each objection individually. We've had responses -- it's hard to categorize these things as motions at this point. It seemed to us that they're opening their case moving for basically reclassification, which is effectively a dismissal and when it came to closing, especially if they're taking one hour to address the pro se issues, which are, as the Court has noted, similar to the issues that are being raised by the represented parties, they don't need one hour for each. They can consolidate those two closing arguments into one, do that first and, we do believe that we should go second. It's not a jury trial, Your Honor, so the dramatic impact of closing second may not be enormous, but I think it's appropriate under the circumstances.

Having said that, Your Honor, I don't think that anyone's going to disagree with whatever the Court -- whatever approach the Court wishes to take on that issue.

THE COURT: Yeah, I think we'll just reserve on that and I don't think it needs to be decided right now unless the parties find that it would be useful to have guidance.

MR. SCHAEFFER: Okay.

THE COURT: Mr. Miller, do you have a position on this that you want to express as to the importance to the process in having guidance on the question of who opens and who closes at this status conference?

MR. MILLER: Well, Your Honor, I think there's more importance as to who opens than there is as to how the closing is handled, as I think I suggested before. It does seem to us that LBHI has been charged with trying to structure and put together this reclassification process and we ought to have an opportunity to present a -- sort of our refined thinking at that point on where we are, what the issues are and to organize it. So I think opening is important, and I don't frankly think there's much disagreement that LBHI should be allowed to open. I don't think that is the question.

I think the question is how the closing would be handled and I think there the issue is more one of rebuttal. I think that certainly if there's going to be arguments particularly by the pro ses, as well as the represented claimants following the evidence that LBHI should have some

opportunity to speak to those and not simply have them present a long closing and not have some kind of rebuttal. But in terms of whether that is structured to say a 45-minute closing by LBHI and an hour and a half or two hours by the claimants and 15 minutes of rebuttal or whether it's split in some other fashion, I think that is a fashion that could be determined later.

THE COURT: I think it should be determined later and at least in my experience in matters that have been heavily litigated within the Lehman bankruptcy cases, it doesn't matter because one way or another everything gets said and very frequently more gets said than needs to be said.

So the order in which it's presented is of no particular consequence, although it is obvious that after the claimants have had a chance to say whatever it is they choose to say at the end of the evidentiary hearing, there will be an opportunity for LBHI to respond because they will be hearing arguments made by a group that includes experienced counsel, but also some individuals that will be presenting argument for the first time and it's conceivable that some things may be said that will require clarification or rejoinder of some sort. So let's worry about that in 2014.

Now, before I let you all go, the correspondence

mentioned one of my favorite words: mediation. To what extent, if at all, are the matters that are presented here susceptible to the efficient use of mediation or in light of Mr. Miller's comments about being at least notionally prepared to proceed by dispositive motion, is mediation simply not a workable concept in a setting in which LBHI takes the position that no matter what the facts, these claims all should be reclassified as equity.

MR. KAPLAN: Your Honor, Eugene Kaplan for the Neuberger claimants. We submitted settlement proposals to LBHI last spring. They responded by saying that while our proposals were not something they could accept, that they provided a basis for discussion. We met with them in July to discuss them. We provided them with additional information thereafter and low and behold, one day late in October Mr. Miller called and said that we're not -- we're only going to make settlement proposals to the -- that limited group of 2008 commissioned salespeople and nobody else, without any discussion, without any further discussion, without any response to our proposals or anything of the like.

Frankly, I don't believe that they conducted these settlement negotiations as negotiations agree fairly or anything else, but I believe there is basis for mediation. I believe that unless -- and maybe it is Mr. Miller's

position that under no circumstance will they pay out on any of these claims other than to these limited commission salesmen in 2008 -- unless that's his position, I think that mediation would be fruitful because the issues are, at this point, are clear, and I think that perhaps a neutral can make some progress, but obviously we were not able to make progress on our own.

MR. SOLOMON: Your Honor, Lisa Solomon.

I join in those comments and I would add that while Enron is certainly a very relevant case, we have made various arguments as to why there's no basis for subordination of the claims here. Arguments that were not raised in the Enron case, and they were arguments that we presented to Weil Gotshal and their client at the July luncheon and we have not received any response. We believe that there's a very cogent basis to distinguish this case from the Enron case as a matter of law, as well as on the facts, because as a matter of law because we have legal arguments that were not presented, nor considered in the Enron case. And I think in light of those arguments and the consideration of both sides with regard to a settlement earlier on IE because of a luncheon, that it would be something that should be given serious consideration, a mediation, as to a possible resolution in this matter.

MR. SCHAEFFER: May I one comment? Your Honor,

I'm sorry, but I'll make a very brief comment. Mr. Miller has alluded several times to a distribution that is planned for April or late March and I know that the Court has expressed some skepticism that we could get this done in time for that distribution. Underlying Mr. Miller's comments is the assumption that this will free up the reserve. We also have an interest in a March distribution because we think when this is resolved that we will participate in it and that's why we pushed, frankly, for a hearing back in December back in July, the big three-month gap where we never got a response.

If there's a mutual interest in trying to accomplish nothing a spring distribution, I think an accelerated mediation process could be the only way to get to that end.

THE COURT: Okay. Thank you.

The debtor is the plan administrator throughout these cases have been advocates of alternative dispute resolution procedures and they have worked remarkably well, and so I must conclude that if Mr. Miller says he is not in favor of mediation, it means that the plan administrator believes as a matter of law that there's no obligation to this class, and as a result will offer nothing unless it's something designed to produce a pragmatic resolution of the reserve.

MR. MILLER: Your Honor, as anticipated, I think some of the response I have to give -- first of all, let me say, personally, I am a huge fan of the alternative dispute resolution and mediations, and I believe that where there is a -- where there are uncertain legal issues, where there are differences in facts, where matters have had a scaler variable, mediation is an extremely powerful and effective tool and I am a great supporter and I know that the estate is a great supporter as well. And frankly, I'm always very reluctant to say that I believe that mediation does not have a place. I think effectively we've had much through the process of mediation. We've had several -- a number, I remember at least two or three face-to-face meetings dealing with settlement with parties. I think we have laid out the position of the estate. It's not been terribly welcomed, but the position of the estate has been pretty simple and pretty consistent and that is that the Enron case controls and the sort of undefined distinctions that Ms. Solomon referred to do not make a difference.

And there have been a large number of equity holders in the Lehman estates who are in the equity class and 3400 of the 3600 original RSU claimants agreed that they were in the equity class and there are 200 or so -- a little over 200 -- of the claimants who chose to go forward and try to get a result. The estate has tried to look at those

claims objectively. We did see a difference that was somewhat scaler with regard to the category of people that I mentioned in 2008 who had withholdings for commissions and never got RSUs. And after thinking about that and looking at it, we decided to make a two-option settlement proposal which has been largely accepted by those who -- one of the other options was accepted. Some of the pro se claimants did not accept it as you heard it or didn't respond.

We do not -- as far as I'm advised, a real internal analysis was done of this issue because it's large enough that it went up to the highest levels in the Lehman organization and the determination was that when you go into a mediation, there is inherent representation, at least as far as the estate is concerned, that there is a way to offer something in the mediation which will induce people to go away and we felt that might be the case with regard to this subcategory and we made those offers. I think the estate's belief is that there's -- based on the message we've received from those who are represented that what they are seeking is not a, you know, the cost of what the hearing would be spread over 200 claimants, which I would frankly be happy to talk with them about if they'd like to when we're finished, but a significant monetary payment on something that we believe, from a legal standpoint is equity, and monetary payments have not been made on things that were

equity at any time in these estates and it's a matter of principle that LBHI doesn't see itself able to suggest that we believe that a mediation is going to change that at all or other alternate substitute resolution procedure.

Obviously, we will do whatever the Court asks us to do and if the Court feels that if an ADR is useful, we will go through that cost. I might add that the estate does not believe that this is when it ought to pay all the costs up. Where the estate thinks that the ADR is worthwhile, it has borne all the costs in the other ADR processes.

THE COURT: Okay.

MR. MILLER: If the claimants want to contribute money and try to have an ADR, we'll certainly consider that, but we don't think that we should be directed to go to an ADR and bear the costs.

THE COURT: I'm not directing anything; I was just asking the question.

MR. MILLER: All right. Thank you, Your Honor.

THE COURT: And based upon the responses, it appears that some of the claimants, through counsel, believe that mediation could be a useful process to pursue. I read Mr. Miller's comments as indicating support and a strong belief in the efficacy of mediation, but a belief that in this instance mediation is not likely to be useful because the estate adheres to a particular view as to applicable law

and as to the appropriate treatment of these claims.

And so, under the circumstances, I believe it to the parties, if they wish to talk or to move some or all of this to mediation, but I'm certainly not going to direct it.

Is there anything more for the status conference?

MR. MILLER: LBHI has nothing further, Your Honor.

MR. SCHAEFFER: Just one brief point, Your Honor, which is that I tried to describe in my letter to the Court yesterday, the structure that we have for the evidentiary hearing procedures order under discussion. I did point out that there was some briefing that was not strictly in accordance with the Court's chamber's rules in lieu of a pre-trial order. The order provides for pre-trial briefs and opposition briefs by each party. I did want to call that to the Court's attention in case the Court had some contrary guidance it wanted to offer.

THE COURT: As far as I'm concerned, the parties should do this on an ad hoc bespoke basis so that you're dealing with the specific needs of this dispute and we don't need to worry about adherence to other general procedures.

MR. SCHAEFFER: Thank you, Your Honor.

I have nothing further.

THE COURT: We'll move on to the next agenda item and those who are involved in this may be excused.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

MR. HORWITZ: Your Honor, Maurice Horowitz, Weil Gotshal & Manges, on behalf of the plan administrator.

The first two contested matters on this morning's agenda are the debtors' 117th omnibus objection to claims and 173rd omnibus objection to claims. The planned administrator is proceeding with respect to only certain claims identified on a notice of hearing that was filed on those two objections. Ralph Miller will be handling these together.

MR. MILLER: Your Honor, Ralph Miller again for LBHI, the planned administrator. With me, at the counsel table is my colleague, Erika del Nido. I'm not certain that I have seen counsel for the claimants in the courtroom and would like to -- there has been a response filed, so there's a response, but I mean to determine whether he's present or dialed in or here or not.

THE COURT: Is we're dealing with the debtors' 117th omnibus objection to claims and the responses of Shashank Agrawal, Joanna Baricevic and William Connors, is that right?

MR. MILLER: There are six, Your Honor. Was that six names? I'll get those for you, Your Honor, if there's a question.

THE COURT: I'm just looking at the agenda. I'm

just trying to understand what we're trying to ascertain as represented or not represented at the moment.

MR. MILLER: Yes, Your Honor. That is correct.

On the agenda, it describes them correctly, Your Honor. And the same counsel represents the parties on the 173rd omnibus objection.

THE COURT: Is there anyone here in connection with the 173rd omnibus objection, other than Mr. Miller?

Is there anyone on the telephone?

There's no response.

Mr. Miller, how do you wish to proceed?

MR. MILLER: Well, Your Honor, the reason that we had presented these to the Court is because there was agreement that this was a legal issue and there is a response. We would like to go ahead and present the legal issue to the Court and see if we can get some guidance on it because it is a legal issue that is common to a number of other claims; however, it is not as clean in many of those other claims as it was presented in the responses that we have here where the responses were expressly agreed that this was a matter that could be resolved as a matter of law. I would like to go ahead, frankly, and present a very short argument and then suggest that Court could decide it on the papers and our argument.

THE COURT: Have you had any dialogue with counsel

for the claimants? I mean this has been -- this has been hanging around for more than two years, so one question I have is whether there's there has adequate and actual notice to the claimants that this is going to be heard this morning.

MR. MILLER: Well, first of all, Your Honor, there have been a couple of other matters that have been set with this counsel and there was dialogue with him on those and I think that ultimately he decided to withdraw some of those claims which were similar to these.

With regards to this particular set of claims, I'm advised by my colleague that several voice messages were left with him about the hearing; that we did not get a response from him on those voice messages and we've had no communication from him indicating he had any objection to the hearing date. In the case of the others, he decided to affirmatively tell us that he was not going to pursue those other objections, or that his clients decided not to pursue them. So I believe that --

THE COURT: I'm confused as to the current status. You certainly are free to make whatever arguments you want to make right now in very summary fashion, but I'm uncomfortable granting relief without greater clarity as to an agreement with counsel for the claimant to be heard this morning and this is largely a concern based upon an issue

that I suppose will come up later in the calendar having to do with the timing and management of the claims resolution process in the case.

MR. MILLER: Well, I --

THE COURT: I don't understand how this popped up today as a contested matter to be heard. I don't know why there's a need for it to be heard today and I don't know whether it's appropriate for it to be heard today unless I know that the attorney that represents this group, in effect, is aware of it and consents to it because it seems as though we have a due process issue, at least from my perspective. I don't view phone mail messages unreturned as being the equivalent to the actual notice. The attorney could be on a trip to Europe.

MR. MILLER: Your Honor, maybe -- we've been going to awhile -- maybe we can adjourn and I could gather all the information. I've got a couple of different notes that are not completely consistent on the efforts to notify him. One of which states that we had spoken to him once about this matter, and the other possibility is that we might call him in the break and see if we were able to reach him.

THE COURT: Why is this even a matter of pressing urgency for this morning? Why is this even on the calendar this morning? Why are we dealing with this now?

MR. MILLER: Your Honor, this issue has to do with

the claim that employees of LBI can assert compensation claims against LBHI based on a generalized alter ego theory.

THE COURT: Well, we know that that's a preposterous notion. We don't have to spend a lot of time on that.

MR. MILLER: Well, Your Honor, if we know that's a preposterous notion --

THE COURT: I know that's a preposterous notion and I know it requires due process and it has been out there for years as an issue. So my question to you is why are we dealing with it today in absence of the attorney who's pressing the claim?

MR. MILLER: Well, Your Honor, it certainly was not our intention to have it dealt with in the absence of the attorney. We were surprised.

THE COURT: Obviously true, but I don't know why we are going forward without greater clarity and an opportunity for that attorney to appear and be heard or to say, you know what, I've given up on that point.

MR. MILLER: All right. Well, Your Honor, again, if we might have a little time to investigate this further, perhaps, if you want to go forward with the other agenda items --

THE COURT: Let's go forward with the other agenda items.

MR. MILLER: -- we can come back.

THE COURT: This one has waited for several years. It can probably wait for another month.

MR. MILLER: All right, Your Honor.

So if that's the direction, Your Honor, we will --

THE COURT: No, it's not a direction. You're free to reach out and try to find out what's going on. It may be that he's not pursuing the issue at all, but it requires communication.

MR. MILLER: All right. Thank you, Your Honor.

We'll try to find out more.

THE COURT: Okay.

MS. MARCUS: Good morning, Your Honor.

Jacqueline Marcus, Weil Gotshal & Manges, on behalf of Lehman Brothers Holdings, Inc. as planned administrator. That brings us to item number four on this morning -- maybe it's afternoon -- almost afternoon agenda. It's the motion of Lehman Brothers Holdings, Inc. for extension of the period to file objections to and request to estimate claims, ECF number 40939.

On November 20th, Your Honor, we also filed the declaration of Thomas Banke in support of the motion. Mr. Banke is the senior director of Alvarez & Marsal, and has headed the claims reconciliation process. Mr. Banke is present in court this morning.

Pursuant to Section 9.1 of the modified third amended joint Chapter 11 plan, the plan administrator's right to object to claims or request estimation of claims is due to expire on March 6th, 2014, which is the second anniversary of the effective date or such later date as the Court may fix for cause shown. Pursuant to the motion, the plan administrator has requested an 18-month extension of the claims objection deadline without prejudice to its right to seek further extensions upon cause shown.

In the motion, as well as Mr. Banke's declaration, we set forth a lot of facts and figures regarding the astronomical amount and number of claims that have been claimed against LBHI and its affiliates. Your Honor has commented frequently over these past five years that these cases are like nothing else that has come before and that's most certainly true with respect to the claims matters, as well.

Yet despite the monumental size of the task, the plan administrator has made amazing progress in the claims reconciliation process. Creditors filed approximately 69,000 proofs of claim asserting approximately $1.3 trillion dollars in liabilities. As of September 30, 2013, the plan administrator had resolved more than 64,500 claims that abrogate more than $1.2 trillion dollars.

Another metric that the Court might find useful is

that to date, the plan administrator as distributed more than $62.8 billion dollars to holders of more than 25,000 allowed claims. As of the date the motion was filed, the plan administrator had reconciled 61 percent of the claims that were unresolved as of the effective date and 93 percent of the total claims asserted against the debtors.

Since the motion was filed, additional claims have been reconciled resulting in the further reduction of disputes claims by $3.2 billion dollars. We believe that the results achieved to date demonstrate that the plan administrator has worked diligently and effectively on the claims reconciliation process and that extension of the objection deadline is appropriate. In addition, an extension of the objection deadline would benefit all creditors who after all bear the professional fees of these estates, because it will enable the plan administrator and its team to continue to focus on the more efficient consensual resolution of claims rather than litigation.

We've laid out in the motion, Your Honor, that the Court has ample authority under various provisions of the plan, as well as the Bankruptcy Code to grant the requested extension. The term of the extension, 18 months, we believe is appropriate because we cannot be sure that we will be able to sustain the current pace of claims resolution. As you can imagine, we have weeded out many of the disputes

that were easier to deal with and as we move forward over the next year, we'll be moving with some of the more complex and difficult claims issues which are likely to work through. The requested extension will not prejudice the rights of creditors holding disputes claims that have not yet be objected to because pursuant to Section 8.4 of the plan, the plan administrator maintains reserves for liquidated disputes claims pending resolution.

Your Honor, we've laid out in the reply the way that we've categorized the objections. There are eight objections that have been filed. We've categorized them as type one objections and type two objections. There are five type one objections and the description of type one objections, these are creditors whose claims have already been objected to, so technically, the relief that we seek doesn't even apply to them, but they basically responded -- and if I can summarize -- basically say this process is taking too long, why can't you process our claim?

The relief for requests -- excuse me -- basically, these objectors are collaterally attacking the claims procedures order rather than the motion or the proposed order that the debtors are seeking today, Your Honor. We recognize that everybody would like to have their claims resolved as soon as possible. We're making our best efforts to do that, but obviously, these things take time.

We believe that the type one, five objections should be overruled and for the benefit of the Court, those objectors are QVT Fund, LP and several pro se claimants, Ann Judd, K -- and I apologize to the pronunciation -- Sayhimovan (ph), Barry O'Brian, who I believe is in the court today, and Charles W. Showner (ph).

With respect to the type two objections, Your Honor, there are there objections listed on the docket. Those objections are Highland Capital, Depfa Bank and Russell Investments. We've responded to the specifics of each of these objections in our reply. Suffice it to say that none of these objections asserts a legitimate basis for denial of the requested relief. Each one of these parties essentially says, my claim is easy to deal with, why do you need 18 months to deal with my claim?

What they fail to recognize is that there are holders of 4500 claims that feel the same way and everybody can't go first. In ruling on the motions we believe that it's incumbent upon the Court to take into account the interests of all creditors and the estates as a whole. When viewed in that perspective, the extension requested by the plan administrator is very reasonable.

If the objection deadline is not extended and the plan administrator is required to file objections to the remaining unreconciled claims, then the reconciliation

process will be slower and more costly for the estates which will harm all creditors. Consequently, for the reasons set forth in the motion and in the declaration of Mr. Banke, the plan administrator requests that the Court enter an order extending the claims objection deadline to September 6th, 2015.

Your Honor, before I answer any of your questions, and you have the opportunity to hear from the objecting parties, I'm also mention that we did get an inquiry, rather than an objection from an additional creditors, that was Giants Stadium. Giants Stadium requested that they be carved out of the proposed order. As Your Honor is aware, the debtors and Giants Stadium have been involved in a dispute for a long time. We've been before you numerous times with discovery disputes in other matters.

On October 23rd, the debtors commenced an adversary proceeding against Giants Stadium seeking to recover approximately $94 million plus interest in connection with a derivatives contract. After careful consideration and in view of the fact that they intend to file an objection to the Giants Stadium claim shortly and conduct discovery regarding the complaint and the objection contemporaneously, the plan administrator has agreed to carve out Giants Stadium from the proposed relief which will -- and the three Giants Stadium claims will remain

subject to the existing claims objection deadline.

We've revised a proposed order and submitted it -- or sent it to Giants Stadium's counsel. They've approved the form of the order and at the appropriate time, I can hand up a blacklined copy of the order.

THE COURT: I'm not inclined to disagree with any understandings that you've reached with Giants Stadium, but I think it's preposterous to use that word again, that any claimant would seek a carve out. That's not what this is about. We're engaged in an argument about appropriate case administration on a global basis. I'm not inclined to grant the request even though you have said yes to it, and since it's my order, they're not to be excluded.

If there are adverse consequences to your dealings with Giants Stadium as a result of my remarks, I'll reconsider them, so I need more argument as to why any party should be excluded from a broad based case administration order of this sort. I think it's an outrageous request.

MS. MARCUS: With respect, Your Honor, to Giants Stadium and whether this adversely affects our relationship -- I don't know if we can use that term --

THE COURT: It's a pretty toxic relationship as it is, so it's hard to imagine how anything could make it worse.

MS. MARCUS: Your Honor, even if the Court does

not carve out Giants Stadium -- obviously, it's your prerogative to do that -- we would still have the ability to file the objection sooner rather than later, right?

THE COURT: You could file the objection today.

MS. MARCUS: Exactly.

I don't know if Giants Stadium's counsel is present in the courtroom or not.

THE COURT: Fine. I'm not carving out Giants Stadium. I'm not carving out anybody, and I don't think that any party in interest should ever be incentivized to seek separate treatment, especially when there's a pending adversary proceeding and the parties are fully engaged. I view it as an example of overlawyering, not to be encouraged.

MS. MARCUS: That's all I got, Your Honor. We request that you grant the motion.

THE COURT: It's really a shame that nobody from Sullivan & Cromwell is here for purposes of that little speech. Maybe there's an associate who took notes?

Okay.

MS. KELLER: Your Honor, may I be heard?

THE COURT: Sure.

MS. KELLER: Your Honor, respectfully, I'm Robin Keller from Hogan Lovells representing QVT Financial, which is a New York based hedge fund manager for investment funds,

QVT Fund, Quintessence Fund, Piney Branch Fund. Collectively, the QVT Funds had over half a billion dollars of exposure to various Lehman entities around the world and in the U.S., their primary claims are complex derivatives termination damages claims of over a quarter billion dollars in amount, particularly involving preferred securities default swaps with LBSF, which were guaranteed by LBHI.

Your Honor, QVT has managed to stay out of this court for five years, but at this point, we need two or three minutes of Your Honor's time in attention to this matter, because QVT believes it is being subjected to abusive discretion by the estate representatives and arbitrary treatment in the manner in which the claims resolution process is being applied to it. We believe that we are impacted by the motion to extend time because that request permits the debtor to assert additional objections to claims that have already been objected to which the QVT claims have been.

THE COURT: Ms. Keller, let me just break in and ask you one question. In the plan administrator's opening presentation, various claimants were put into so-called type one or type two. You acknowledge that you're a type one?

MS. KELLER: We're a type one.

THE COURT: So issue has been enjoined?

MS. KELLER: Correct, Your Honor.

THE COURT: Then why is this an issue for you?

MS. KELLER: Let me explain briefly.

QVT filed a number of claims, all the supporting documentation. Those claims were objected to two and a half years ago in 2011. QVT filed responses to the objections at which point they were adjourned indefinitely by the debtors; however, QVT was approached by the debtors to engage in informal review and negotiation of the claims in early 2010, over three years ago and since then, QVT has devoted extensive time and effort to producing full transparent comprehensive back up to the estate representatives supporting the calculations of its damage claims including providing 13 different packages of analysis presenting its positions on different aspects of its claims responding to Lehman's questions and comments and receiving minimal substantive feedback from Lehman in support of itself conflicting calculations.

There have been more than a does phone calls and meetings between QVT representatives and the estate representatives over this time period, including a presentation by QVT's expert witness Professor Paul Flighterer (ph) to the Lehman negotiating team.

As I said, our claims were objected to two and a half years ago but with no substantive basis put forward by Lehman other than the claims were too high. So literally

after years of discussion without resolution the estate representatives approached QVT earlier this summer to work out an ad hoc mediation approach, and on July 13th of 2013, QVT confirmed in writing to those representatives its agreement to the mediation process proposed, which it expected to commence in the third quarter of this year.

After a lengthy period of silence, the estate representatives asked for yet another conference on the claim, claims which occurred in early October, without any resolution, and to date, they have failed to respond to QVT's calls about getting the mediation process started.

Your Honor, Lehman characterizes QVT as one of the claimants seeking to compel the plan administrator to resolve objections to particular creditor claims, quote, immediately. They call QVT's complaint about the way it's being treated a collateral attack on the claims procedures and state that QVT should not be allowed to skip to the head of the line. These generic responses are simply not applicable to QVT's situation. QVT recognizes that the debtor has to have discretion in how it manages a claims portfolio of this size, but there is also such a thing as an abuse of discretion, and we submit that deliberately or not, QVT has become the victim of such abuse.

It is not fair and equitable exercise of discretion to put a claimant through a never-ending process

of having to explain and justify and support its claims with no prospect for resolution unless it gives in to what it believes is a mismarked book and an unjust valuation for its damages. QVT has no recourse under the procedures approved by this Court unless the Court orders the plan administrator to stop stringing QVT along with its start and stop approaches.

THE COURT: Ms. Keller, let me just break in for a second. It's already more than the three minutes that you've asked for.

This is an order requested by the debtor that I've already indicated is designed for general application to all 4500 claimants that have not been resolved to this point, if that's the correct number. It's at least a good approximation for the number and you have an unresolved claim. Your argument feels like it's very parochial, understandably you're representing a client and you're being opportunistic by taking this opportunity to object to something as a means to call attention to your unresolved claim.

Let's just say for the sake of discussion that I'm sympathetic to the fact that you and certain other claimants have had to wait awhile, but there's a big "so what" that follows that because there's nothing that special about QVT, other than it happens to be your client. It's one of a

class of, as yet, unresolved claims, presumably with some complexity, because I'm guessing that derivatives are involved in one fashion or another, and so how do you make this a sympathetic argument when it's being raised in a context of a case administration motion that I've already said in the context of the requests by Giants Stadium for special treatment will not involve special treatment for anyone?

That was a shot across every objector's bow, as well as a direct shot at Giants Stadium that at least throughout this period of maybe three years as been very actively involved in difficult litigation and should know better than to inject itself into a broad-based case administration order such as this, but that's a detail. The general proposition is I recognize that parties raise their hand and say what about me all the time and there's absolutely nothing wrong with raising and objection and seeking special attention if you can get it, but what does that have to do with the pending motion?

This isn't a motion to compel attention to your claim, but that's the effect of your objection.

MS. KELLER: Your Honor, if I may respond. We are not seeking to be carved out of the objection, but given -- we're not asking to be moved to the head of the line, but we're asking not to be pushed to the back of the line in an

order Your Honor is being asked to enter which is a blanket approach to dealing with thousands of remaining claims.

Your Honor, this plan, as you know, was confirmed over 18 months ago and a lot of money is being held back for QVT pending the resolution of disputes over its claim which QVT would rather have in hand and be able to invest. And the point is that QVT has been a good citizen. They've done a lot of work to help the debtors understand. They've participated in the process throughout. They've been more than patient and they've been offered the opportunity to mediate, which you said previously is one of your favorite words, and we want to mediate. We're ready to mediate. Lehman knows everything about our claim situation, but can't seem to close the gap with us.

And I don't think it's fair that they've given a blank check to invite counter parties to the table and say, oh, nevermind, we'll see you in 18 months or two years. It is an abuse of process, Your Honor, and that's what we're here to raise.

THE COURT: Well, let's --

MS. KELLER: And so we raise this objection, but we ask that you ask the debtor or advise the debtor to stop playing games and stringing us along.

THE COURT: Well, you're the first to stand up, so this becomes an opportunity for me to provide some

foreshadowing as to anybody else who might stand up. This seems to be -- pardon me of my use of the term -- a misappropriation of this motion practice to obtain preferential treatment or, if not preferential treatment, to try to gain a procedural advantage relative to timing all in the context of a motion that simply pushes out an end date, that in the context of the confirmed plan, has proven to be too tight, consistent with the orderly resolution of all of the as yet unresolved claims.

So while I understand the motivation on your part and the part of the other objectors, I'm quite unsympathetic at least in this context. I understand the desire of each claimant that does not yet have a resolved claim to be processed, if I can use that term, and to fall into the class of the claimants that will then have an entitlement to catch up distributions and future distributions and the amounts involved are quite apparently significant. But the amounts that are significant include not only the dollars involved, but the unfinished work that needs to be done and everyone in that category presumably has cause to assert a personal priority and ask what about me?

You sat through the somewhat lengthy proceeding that we started with today involving RSUs and CSAs and represented claimants and unrepresented claimants and the somewhat difficult process then being discussed for dealing

with these claims. That is but one example that anecdotally happens to be today's example of the complexities of this case, and so I'm granting the motion. I'm not carving anybody out from the motion, but I'm suggesting that those parties that cared enough to file objections or to complain about process continue to do just that, continue pressing for resolution. And particularly where a party like your client is interested in mediation and has, according to your comments and your papers, a right of claim for resolution, maybe there's another way to get this resolved.

MS. KELLER: Your Honor, we would love to know what that is because procedurally, we find ourselves in a real Catch-22 here. Our claims were objected to, but adjourned indefinitely. We're not on the calendar.

THE COURT: I understand.

MS. KELLER: We've asked for mediation. We can't get mediation, and we don't know when we will ever get to resolution. I understand others feel the same way, but we've invested a lot of time and effort in trying to make it as easy as possible for the estate to resolve this substantial claim.

THE COURT: I understand, and one of the things that also happened this morning is that we had a contested matter relating to alter ego claims of employees arguing that claims against LBI were actually claims against LBHI

under some doctrine. That's when I first used the word preposterous today, and one of the things that is somewhat opaque from the Court's perspective, and I presume also from the perspective of parties who are objecting to this relief is that largely because so much of what goes on in case administration occurs outside the courtroom, it is never clear to me until a day or two before we have a hearing, whether it's on claims or on general matters, what the plan administrator is going to dishing out for the Court to deal with. That's just the way it works.

It's not my job to micromanage the administration of any case that's assigned to me, but it is my job to deal with matters that are presented to me. I don't determine the priorities: the parties do. I don't know if there's a procedure or if there should be a procedure for determining who comes first. And Ms. Marcus made the comment in her opening presentation and it's true everybody wants to be first, so I have a suggestion and it's not in the nature of the granting of any relief. It would be more desirable if this process were more transparent in offering parties within the class of not yet allowed claims or not yet disallowed claims to understand how determinations are being made as to who comes first or who gets earlier treatment or who gets deferred because while I have heard your argument about abuse of process, there's no record here to support

that argument and I don't find based on my own experience in administering this case that there's been any abuse by the debtor and the plan administrator, but that's not to say that some party might not be able to make such an assertion and that's not to say that there might not be an instance where a finder of fact might be persuaded that that is true.

So I'm letting everybody know that it's my intention to grant the relief in this procedures motion. It's purely procedural. The impact, however, of extending the time to September of 2015 remains to be seen. I don't know how the plan administrator intends to proceed with ordering this massive workload, this still massive workload, nor do I know what's really in the pipeline in terms of claims that have been previously objected to, the time one claims, that may be susceptible to mediation or some sort of agreed resolution as opposed to having contested matters decided by the Court.

So what I'm going to suggest in the context of granting this relief is that there also be a better window into the process so that parties who are anxious to have their claims resolved might have some ability to understand why it's not yet timely for their claim to be resolved or it may be timely and for there to be some broad-based work plan available for public dissemination or private dissemination with confidentiality to the extent that this may be

sensitive information, as to how the plan administrator intends, over the period of time between March of 2014 and September, 2015, to use that time in an efficient and fair way.

Now, no one has asked for that because everybody's objection is what about me. My response to it is this is a process-based motion and there should be a process-based response to it, not only for those who have objected, but for anybody who may feel aggrieved. So I'm going to propose that the debtor, plan administrator, with counsel and advisors come up with -- if they don't already have it -- a plan. I don't know if such a plan exactly exists as we speak it may, it may not, but if it doesn't exist, it should; otherwise, we're simply dealing with a squeaky wheel concept of case administration and that's, in effect, what your objection is.

So there's no reason, just because you're a squeaky wheel for you to get the grease, but there should be a process in which parties within classes and categories have reasonable expectations as to how their claims are going to be addressed over time. So I think I've actually disposed of everybody's objection and I hope that the process that I am encouraging is helpful not only to the parties, but also to the debtor plan administrator.

Does anyone else wish to be heard on this?

MS. KELLER: Thank you. We welcome that transparency and understand that should we wish to pursue a claim of abuse of process, we would have to bring a record before Your Honor, and so I would hope that that would not be necessary --

THE COURT: I would hope that that would not be necessary, too.

MS. KELLER: -- and we will get everything resolved. Thank you, Your Honor.

THE COURT: Okay. Thank you.

MR. GUY: Thank you, Your Honor. Jonathan Guy for Depfa Bank, Orrick Herrington & Sutcliffe.

I understand the Court has ruled and we respect that ruling and we understand that this is based upon it's a process. We want to make clear that Depfa was not objecting and saying that we want to be carved out. We were saying there are categories of claims that are different and exactly what Your Honor just said is understanding why certain categories of claims which can be objected to, where they've been through mediation, where the parties understand the disputes, where are they in the queue, but we're not asking for a specific carve out.

THE COURT: Okay.

MR. GUY: We didn't believe they showed cause as to those categories, but we understand the Court has ruled,

Your Honor.

THE COURT: Okay. Thank you.

MR. GUY: Thank you.

THE COURT: Anyone else wish to be heard?

Mr. Vasser?

MR. VASSER: Good afternoon, Your Honor.

Shmuel Vasser, Dechert, for Russell Investments. And I understand that Your Honor ruled. Fairly few short comments, one is that we are type two. Our claims have not objected to and we actually -- why we can't represent everybody of the 4500 claimants whose claims are still open, we actually did not ask to be ahead of the line. We didn't ask for any particular relief for us. We just expressed Russell's view, which may be misguided, but Russell's view that the process takes too long and giving the debtors an additional 18 months without -- with an open option for extension is just too long.

So I understand that Your Honor is going to grant the motion. I'm just putting it on the record because I suspect in 18 months I'm going to be here again and making maybe a similar argument that may be received the same or differently in 18 months.

The second point I just wanted to make the Court aware of is that in the response to our objection, they noted that two of your claims are marked as accepted as

filed and therefore resolved. We actually knew that, but when we called the claims agent and we asked what does that mean, they told us it really doesn't mean anything because as long as the claim is not allowed, the debtors can still object to it as long as the deadline runs.

I asked LBHI to confirm to me that what it means, accepted as filed, actually means that they viewed this claim as allowed and I got this confirmation, but I know that there are many others, many other claims on the claims docket that are marked accepted as filed, but nobody knows what that means. And I think if their view is that claims that are marked on the claims register as send as filed are allowed, then they need to mark the docket appropriately. Thank you very much.

THE COURT: Okay. Thank you.

Ms. Marcus?

MS. MARCUS: Your Honor, just very briefly.

We've heard your comments and we will work with primarily, I guess, Mr. Banke on a plan. I'm sure that he has his plan -- it is nothing that I've seen and I will try to develop something that will be user friendly that we can share with people who make inquiries. I must say that I take umbrage at the suggestion that there's been an abuse of process here because that's just simply not the case. In fact, the facts referred to by Ms. Keller in her objection

reflect that we have engaged with QVT over an extended period of time, but I guess that's for another day.

We will submit the original order, I suppose, right?

THE COURT: The original order?

MS. MARCUS: Without the carve out?

THE COURT: Without the carve out.

MS. MARCUS: Okay.

THE COURT: It's a no carve out order, but it's a -- with some effort to clarify in a way that is observable by claimants the process and procedures that will be applied on a go forward basis to resolving the 4500, as yet, unresolved claims.

MS. VOLKOV: Your Honor, would that be a provision in the order?

THE COURT: It's simply part of the record.

MS. MARCUS: Okay. Thank you, Your Honor.

MS. VOLKOV: Your Honor, Ilana Volkov for Highland. I was not going to get up, but it just occurred to me -- I'm wondering whether to help the transparency it makes sense to have a status conference sometime down the road so that aggrieved party can be heard to the extent that the transparency is not as transparent as the parties would like it to be and just to keep the process moving along.

THE COURT: I don't think that's a terrible idea

because it provides some accountability as to how this concept will be, in fact, implemented, and my suggestion is that we simply have a status conference on claims procedures and priorities as an agenda item, say in three months.

MS. MARCUS: That's fine, Your Honor. We have no problem with that.

The one thing I do want to caution, I guess everybody, about is this plan we're going to be sure not to disclose things that are attorney-client issues.

THE COURT: Of course. I'm talking about a broad concept that gives parties some sense as to the rationality of the work plan for dealing with the, as yet, unresolved claims to that parties have an ability to, in effect, calendar, when in the reasonable future their claim might be the subject of either a motion or negotiations to resolve it.

MS. KELLER: Your Honor, it would also be really helpful if there was a person identified at the plan administrator that would be responsible for this and who we could talk to about where we might fit in.

THE COURT: That might be absolutely true, but I'm not going to be drafting this today, so parties can send letters to Ms. Marcus, who I think will end up as the clearinghouse as suggestions. I'm not trying in this suggestion to create a burden or significant incremental

work, rather, I am proposing a procedure that will enable those whose claims remain unresolved to better understand why they are waiting and when they can reasonably anticipate the claims within a certain category. For all I know, it may be alphabetical. I have no idea how we're dealing with priorities will be heard -- I'm not suggesting, by the way, in that little aside, that I think an alphabetical order makes sense -- but people tend to organize information in rationale ways or like my desk, stuff is just thrown on it, but I know how to find it, mostly.

MS. MARCUS: I tell people that too.

THE COURT: So my point is that there's either a rational approach to organizing this data or there's an irrational one which also works, but -- and I'm not telling you how to do it -- I'm just asking you to make it clear to third parties what's going on.

MS. MARCUS: That's fine, Your Honor, and just to point out in terms of a contact person, every single omnibus objection that we filed -- obviously, this only applies to people whose claims have already been objected to -- but every single bus omnibus objection has the name of a Weil Gotshal associate and a phone number to contact them and it's amazing how many people don't look at the objection and call somebody else, but if those people are contacted, they are the best people to be able to respond to status or to

follow-up and get an answer for somebody. I think we'll deal with that in the plan.

THE COURT: Okay.

MS. MARCUS: Thank you, Your Honor.

THE COURT: Thank you.

MS. MARCUS: The next matter will be handled by Mr. Horwitz.

THE COURT: Okay. And everybody who's involved in that last matter can be excused.

MR. HORWITZ: Your Honor, before we go into the last matter on the contested -- or on this morning's agenda, I wanted to report that my colleague, Erika del Nido has had an opportunity to speak to the counsel for the two veil piercing objections and is able to report at least to the Court what that attorney would like to do.

THE COURT: All right.

MS. DEL NIDO: Good afternoon, Your Honor.

Erika del Nido, Weil Gotshal & Manges for Lehman Brothers Holdings, Inc. Your Honor, well in advance of this hearing, my colleague, Maurice Horwitz, and I spoke to Mr. Bruce Duke. He is counsel representing those six claimants to try and set a hearing date. We told him about the November hearing. He raised no objection. He said that he desired to follow up with the claimants that he was representing.

Subsequent to that, we left him several voice messages to follow up to see the status. At the brief intermission today, Your Honor, I spoke to Mr. Duke on his cell phone explaining what was going on today. He informed me that he desires to go forward on his papers alone. He does not wish to make any additional oral argument and he would like to stand on what he has submitted.

THE COURT: All right.

MS. DEL NIDO: Thank you, Your Honor.

THE COURT: Mr. Miller, on that basis, to you wish to press your argument today?

MR. MILLER: Your Honor, we would like to try to get a ruling. I think you've already characterized these claims, but we have a number of people who are making this same argument and you've alluded to the difficulty of claims administration, getting some clear guidance on this issue will assist with claims administration, so we would like to go forward with the papers, if we could.

If I could have two minutes to just point out the important things in the papers.

THE COURT: Why don't you proceed, and as to the last matter on the agenda that is coming back after about 18 months of unexplained absence, I'm inclined to adjourn that until 2:00 because it may take a little time and it's now almost 12:30. So my understanding is that the 2:00 calendar

has cleared. My courtroom deputy told me that we received a call indicating that the Fannie Mae matter is being adjourned to another date. I just want to clarify that to make sure that we have time at 2:00 for the Caisse Des Deposts Et Consignations. It sounds a little sexy.

MR. MILLER: So, Your Honor, can we go ahead and submit the 117th and 173rd objection issue briefly before we adjourn?

THE COURT: Let's deal with the matter at hand before we adjourn and then the renewal of the issue of the late filed proof of claim can be heard at 2:00 if that's okay with everybody?

MR. MILLER: That certainly works with LBHI, Your Honor.

UNIDENTIFIED SPEAKER: That's fine, Your Honor.

THE COURT: If you wish, you can be excused and come back at 2:00. It's up to you.

MR. MILLER: I can make this very brief, Your Honor: papers that the respondent wants to rely on makes only one objection or response to the objection and it is quote, submit it is submitted by claimants that LBHI is the alter ego of LBI and as such, LBHI is ultimately responsible for the obligations of LBI, including those of claimants. LBHI's attempting to construct an artificial distinction between it and LBI in order to avoid legitimate compensation

claims of payment of claimants. That's in paragraph 12 of the response in issue to the 117th omnibus objection and paragraph 10, identical paragraph, to the 173rd.

The three claimants in each of those that are the subject of this particular hearing have all identified themselves as, quote, claimants are all former employees of LBHI through one of its wholly owned subsidiaries, LBI, or an affiliate of LBI.

Now, the Court can, of course, take judicial notice of the fact that LBI is the subject of proceeding before it under those Securities Investors Protection Act and it is a debtor in solvency proceeding. The Court is also take judicial notice of the fact that there are numerous representations in that it's a Delaware corporation. LBI is in a Second Circuit in a landmark decision by Judge Pollak held that a claim alleging that a debtor or bankrupt is the alter ego of its controlling stockholder constitutes property of the bankruptcy estate or the debtor in possession and it can only be asserted by the trustee or the debtor in possession, and that's the call Vorhees case, 8 fed 3rd 130 at 132. The doctrine was reaffirmed and applied to a Delaware corporation like LBI by Judge Gonzalez in Duke Energy Trading and Marketing v Enron, a 2003 case, that we cited to the Westlaw cite in the brief. Judge Gonzalez wrote, based on the fact that Delaware law

allows a subsidiary to maintain an action against a corporate parent, Courts have found that a Delaware Court would permit a debtor corporation to assert a claim to pierce its own corporate veil, and there are some citations.

He then said, thus, the trustee or debtor in possession would have an exclusive standing to maintain a Delaware corporations alter ego claim of a general nature.

All of the elements of that holding apply here. The response also said, and I think it's been reconfirmed by the information reported, quote, a hearing is not required to dispose of an objection, rather, this Court may apply a summary judgment especially when as in the case sub judice there are no genuine issues of material fact. That's what the response said in paragraph 13 of the response at issue in 117th in paragraph 11 of the response to the 173rd.

So this has been submitted. The facts are clear. This is a generalized alter ego claim. There is a sound policy raised which is apparent to the Court for gathering the value of an alter ego claim into a debtor like LBI so it can be distributed throughout the rest of its creditors, all of its creditors, and not by individual creditors can assert an alter ego claim for a debtor.

And in this particular case, the system has worked just like it was supposed to because in the record that the Court has is the fact that a settlement was achieved between

LBI and LBHI and one of the claims that was released was the possibility of alter ego claims. The unredacted version of that has been provided to the Court.

If there is any value in a claim that LBHI improperly dominated its subsidiary, that value should have passed through such a settlement to LBI and claimants who are making the claims that these parties are and claims like it that they were employees of LBI, they had compensation claims against LBI, if they recover on those compensation claims against LBI and the LBI estate now has more value in it because of its settlement with LBHI hypothetically, then they will get the benefit of that value and share it with all of the rest of the creditors.

So the system has worked here the way that it was supposed to work. And the proposed orders that we have submitted would rely solely on the standing issue and they would make it clear that for these generalized alter ego claims where somebody -- and we've got these claims disbursed through a lot of other claims, usually mixed with other things -- that there is not standing for employees of LBI to assert compensation claims, and frankly, we think it may apply to broader contexts but that's the context before the Court.

Under the Second Circuit ruling in Cobb and other cases that follow it and especially the explanation of that

by Judge Gonzalez in Duke Energy Trading and that's, Your Honor, what we would like to have established, if at all possible, for clarity and to assist us going forward.

I'd be happy to take any questions, Your Honor, but that's the issue that's been submitted.

THE COURT: I have no questions. The outcome here is clear. These individual former employees of LBI do not have standing to pursue claims against LBHI on an alter ego theory. I will enter the order that so provides and would simply observe the obvious. The LBI estate is being separately administered by Mr. Giddon (ph) as SIPA trustee. The LBHI estate has been separately administered as a Chapter 11 case that resulted in a confirmed plan in December of 2011.

The estates are distinct and will always remain so. The employees of LBI have whatever rights they have in that proceeding. They have no rights in the LBHI case unless, of course, they have other grounds to assert claims other than their status as LBI employees.

MR. MILLER: Thank you, Your Honor.

We have submitted the orders, I believe, already, and we have discs -- we have them on disc.

THE COURT: Fine, then we'll return at 2:00. We're adjourning for lunch.

MR. MILLER: Thank you for your time, Your Honor.

THE COURT: Thank you.

(Recess at 12:31 p.m.)

THE COURT: Be seated, please.

Good afternoon.

Do you want to proceed?

MR. HELLMAN: Thank you, Your Honor.

Good afternoon, Jay Hellman, Silverman Acampora for the movant for purposes of the motion today, so I'll have to ask the Court to excuse my French, if I can refer to my client as CDC, I would appreciate that. I think it would be easy on all of us if we could do that.

THE COURT: We'll refer to your client as CDC.

MR. HELLMAN: Thank you, Judge.

Your Honor, before the Court is CDC's second motion for allowance of a late file claim. The Court may recall that the last time around that CDC had made the motion for permission to file a late claim and the Court had denied that motion without prejudice subject to our coming back with answers to certain questions and we took that directive very seriously, Judge.

THE COURT: Well, let's talk a little bit about that because I don't think all the questions have been answered and I'd like to start out with just some explanation as to why it took so long to deliver so little.

MR. HELLMAN: Well, Judge, we went back to the

client, which is a French-speaking client and explained to them the reasons for the Court's denial of the motion the first time around.

THE COURT: Just so we're around on representing a French-speaking client --

MR. HELLMAN: Yes, Judge?

THE COURT: -- I expect I'm not the only person in the room who's been to Paris and I expect that I'm not the only person in the room to know that certainly in the commercial world English is the lingua Franca of Europe. Everybody who's involved in business in Europe speaks English to one-on-one another. It's esperanto for business in Europe, so the argument -- I'm just letting you know right now that we're dealing with a French-speaking client -- isn't going to take you very far.

MR. HELLMAN: I understand, Judge, and I'm not making that as -- I'm not suggesting that as any type of excuse. I'm simply putting it out there to explain that to the Court.

Yeah, at the higher levels I think there is some English -- there are some English-speaking individuals --

THE COURT: There are plenty of people in this organization of 76,000 people who speak fluent business English and who understand that mail needs to be opened and read.

MR. HELLMAN: Well, here's the situation, Judge. We went back and we asked the client -- actually told the client that we're not coming back here unless we get as much information as we possibly could from them in order to answer the Court's questions, and yes, admittedly, there, are some blanks, but we did the best we could to fill them in.

THE COURT: Who is the individual who is responsible for this transaction and why is that individual not here or why is that individual not submitted to a deposition and why is it that your papers, after such a long period of time, provide absolutely no incremental information that goes to the question of excusable neglect?

MR. HELLMAN: Well, because there's not one particular individual involved in the transaction. As the Court can see from the papers, there are three or four different divisions that were involved in these -- in the master agreement transactions, okay.

To the extent that the mail was returned, which is what took us so long to find out, you know, who was responsible to sending that back, it turns out that it's nobody, Judge. Really, they have this central mail division, if you will, where everything goes to that division and the mail is sorted there by folks who don't necessarily speak English. Maybe they do speak a little bit

of English but maybe they don't speak English.

THE COURT: It almost doesn't matter.

MR. HELLMAN: But we couldn't find the individual responsible for that.

THE COURT: But it almost doesn't matter because regardless of the language that is spoken in the mailroom, presumably, there are procedures that are regularly followed by the personnel of the mailroom for dealing with mail such as this and for mail that is designated as important or even if the person who received the mail isn't sure that it's important, the procedure of just sending it back is just inexcusable to me.

And since your principle argument made a year and a half ago was that this is a vast organization that gets thousands of pieces of mail a week and that it's incredibly important to track mail that it be specially addressed, I have to think that lots of mail comes that isn't specially addressed, so one of the questions that hasn't been answered but was asked last time is what procedures apply to the processing of mail so that mistakes such as this don't occur on a routine basis and you haven't provided any of that information.

MR. HELLMAN: The answer to that question, Judge, is I think that why it highlights why it's so important that the debtor should have addressed that envelope to that

department because what happens, Judge, is --

THE COURT: Wrong answer to the wrong question, and I understand that you're being an advocate here.

I've asked specific questions that haven't been answered, so it's unreasonable to the point of being fool-hearty for any large organization, especially one entrusted with pension funds, to assume that it can rely upon third parties to correct deficiencies in its own organization. There needs to be procedures in the organization that are effectively idiot-proof, that allow for mail, regardless of how it's addressed, to get to the right place within the organization or there will be something akin to malpractice, and that's what this is.

MR. HELLMAN: Well, unfortunately, Judge, and it's part of getting to your answer to the question, what I was saying is that it's so important to that have particular address, and that's why the master agreement had that particular address.

THE COURT: But the master agreement, with respect, does not trump bankruptcy notes provisions, nor should it ever --

MR. HELLMAN: You see, that's where I --

THE COURT: You can disagree with me on this but you're going to lose on this. I take an emphatic position. You can't take notice provisions in an instant agreement and

make them govern a bar date order. The bar date order speaks for itself, needs to be complied with and it also appears to me that your client having terminated this transaction took ownership of the breakage from that point forward. They could not do nothing. They can't rely upon the fact that they didn't get actual notice when actual notice was mailed to three addresses and you haven't provided to me with any explanation as to how your client actually functions, other than to say lots of addresses, ten different addresses in Paris, 76,000 employees, very important that mail be specially addressed, but there has been no acknowledgment of responsibility and accountability for the problem.

Had there been more of that in the second motion, it would have been different from the first, but actually it's just late and saying the same thing again.

MR. HELLMAN: Well, actually, Judge, to the extent that the mail is not properly addressed and they can't figure out which department it goes to, unfortunately, it gets returned as undeliverable. That is why --

THE COURT: Unopened and returned?

MR. HELLMAN: Unopened and returned.

THE COURT: Don't you think that's a pretty stupid set of procedures for an organization that's entrusted with fiduciary responsibilities for retirees in France? Don't

you think that it amounts to something that's almost actionable negligence per se?

MR. HELLMAN: No, that's why they have in these documents, such as the master agreement, the very specific notice provisions.

THE COURT: Very specific notice provisions do not trump an obligation on the part of a swap counterpart party to act commercially reasonable ways and the from moment that your client terminated the swap on September 18th, I believe, 2008, it took ownership of the termination. Somebody in authority messed up. Somebody in authority made a business decision to write letters in English to Lehman to terminate the swap and then relies upon the fact that they aren't English speakers to say, well, a document that comes to us in our mailroom that isn't properly addressed and that we return does not constitute due process under the constitution, hardly.

Under our procedures, properly mailed notices that actually are delivered constitute actual notice and I completely disagree with your argument and I find that your papers a year and a half late offer me absolutely nothing to distinguish them from the first set. You had denial without prejudice and then came back with more of the same.

MR. HELLMAN: Judge, if I may, there are a few cases that were cited in our papers, National Union Fire

Insurance Company, I believe.

THE COURT: The debtor distinguishes those cases.

MR. HELLMAN: That says if you contract for a particular type of notice, then that trumps whatever notice you get, whether it be by notification by publication or notice to a different address or anything else.

So, I understand where the Court is coming from in terms of the position that the Bankruptcy Code trumps anything that the parties can agree to, but I think that those cases speak to a different -- or to a whole differently.

THE COURT: Let's oh before we get to the cases, I need to understand a couple of things.

MR. HELLMAN: Sure.

THE COURT: One, why did it take as long as it did to remit this motion because the delay almost seems inexcusable to me and I'd like an explanation --

MR. HELLMAN: Sure.

THE COURT: -- other than you have a French-speaking client, and two, why weren't you able to provide more information to answer the questions that were quite plainly on the record last time?

MR. HELLMAN: Well, to answer the first question, Judge, again, we took Your Honor's -- I don't want to say directive -- but inquiry very seriously and we spent

considerable time and effort trying to find the answer to the question of who sent that back and, you know, months later after investigating, we found that, well, we couldn't find the individual who sent it back. It was somebody from this central mail division, and, you know, we tried to inquire about, well, how does that work and what happens.

Their answer is well, we get thousands of pieces of mail a day that we specifically require people to address mail to a particular location because we have so many of them and if it's not, unfortunately, it doesn't get opened and it gets sent back, return to sender, and that seems to be what happened in this case.

And as we're preparing the papers and drafting the papers, we have more and more questions about what's going on, but even before that, Judge, there's still other issues concerning folks from the CDC who had left that we were dealing with, the personnel. So new personnel came in. It's a quasi-governmental agency where, yes, it's not the most efficient entity in the world, but we had to deal with those folks and catch them up to speed. We had to get authority to file a second motion, so it did take some time. We had to get retained for a second time with respect to the second motion, so it did take some time, no question.

But, you know, I was here listening to some of the arguments and we're not trying to get first in line like

some of the others, but the Court had given the debtors until, I think, September, maybe, but certainly 2015, some point in 2015.

THE COURT: September, 2015.

MR. HELLMAN: Okay. So, yes, there may have been a delay in terms of being able to file this second motion, and maybe even the first motion because they really didn't know what to do at that juncture, but it doesn't have any effect on the debtors. We're talking about a very small -- yes, three or four million dollars is a lot of money -- but we're talking about a very small sum of money given the context of this monstrosity of a case where there's millions if not billions of dollars involved in claims. There's really no downside to the debtors to allow this claim to save three or four million dollars of money for civil servants in France, you know, their pension funds.

So, yes, there was delay. I think from CDC's side, there's no question, and I can't deny that, but I think in the context of the overall case, there's really no prejudice to the debtors on this.

THE COURT: Well, that's a different argument, though. What I'm struggling with in my two-part question is the reason for the delay and I think the short answer is it took too long, didn't it, but nobody's prejudiced in your argument.

But the second part of the question is what's different in this motion from the first one? What questions have been answered about whose responsibility it was? Who takes ownership of this trade, including the decision to terminate it? Who, if anybody, paid attention to it after it was terminated? Who, if anybody, paid any attention to the fact that Lehman Brothers was in bankruptcy after it was terminated? Who, if anybody, supervised the mailroom, and takes ownership for the procedures that are followed there? What if anything can be said about excusable neglect in setting that appears to be supine negligence?

MR. HELLMAN: Well, I don't know if there's any singular individual. I mean I've seen some of the documents that have been submitted by the debtors, but there a few folks who sent letters saying, you know, we're terminating this master agreement, which, by the way, Judge, you know, I know that the Court had said that once it's terminated, somebody has to seek responsibility for that, but the notice provisions still survived the termination of the agreement, so I just wanted to make that clear.

THE COURT: As to the notice provision issue, just so it's clear, if you think about what you're advocating and you take it to its logical extreme in a case such as this that involves significant complexity in the documentation, notice provisions that are buried inside agreements are

probably much more important for the non-defaulting party to give notice to the defaulting party than it is for the defaulting party to give notice to the non-defaulting party because in the world of derivatives and swaps, parties that have in the money claims are expected commercially to take appropriate steps to protect their interests and your client did nothing.

And your second motion offers for evidence on diligence on the part of your client to pay any attention to this. It appears to have completely slipped off the radar screen of your client. Now, you try to argue that they didn't need to do that because Lehman had an obligation in giving notice of the proof of claim bar date to follow special notice provisions in the ISDA, but they followed notice provisions adequately for purposes of the proof of claim notice provisions themselves.

To apply your rule in a case such as this would mean that the debtor would need to examine every single operative document that might include a special notice provision in the context of sending out bar date notices to the world.

MR. HELLMAN: And to some degree, Judge, I think they did that because CDC did get all the correspondence from the debtors.

THE COURT: As a result, you acknowledge that

there was notice sufficient for due process under applicable U.S. law.

MR. HELLMAN: I don't think so, Judge. I think for a note -- let's agree on a couple things. CDC was a known creditor. They were listed on the schedules, so publication is not going to save the day for the debtor. The only issue I think they can raise with respect to notice is number one, they had served CDC Capital, which by the name they served that notice, it was no longer affiliated with CDC and the notice requirements in the contract said, with respect to CDC Capital, only with respect to disputes or transactions involving CDC Capital would notice be sufficient to them and that didn't constitute notice to CDC proper and they sent it to some other address in Paris which was not part of this operative agreement which had specific notice provisions.

But the debtor knew that there were specific notice provisions because they sent notices and other letters and correspondence to CDC using the very specific required notice provisions in the ISDA agreement.

THE COURT: That's not the point. The point is as to this particular notice, it was correctly addressed and it went to the central mailroom and it was then kicked back, return to sender. Does that pattern establish actual notice of the bar date as a matter of law?

And the answer is yes. Tell me why I'm wrong --

MR. HELLMAN: Well --

THE COURT: -- because the answer is yes. Consistent with my view, and you can convince me I'm wrong now, this is your opportunity -- ISDA special notice provisions do not trump general notice provisions. General notice provisions were calculated to provide actual notice to your client and everybody else that received notice of the bar date. In this instance, a properly addressed letter was delivered, by your own admission to the central mailroom and the central mailroom then acted negligently.

MR. HELLMAN: Well, that's where I think we disagree, Judge. I think the central mailroom acted in accordance with whatever procedures the central mailroom has.

THE COURT: Those procedures are exactly what I wanted to know more about --

MR. HELLMAN: Which is --

THE COURT: Let me just finish.

MR. HELLMAN: Sure.

THE COURT: Between the last hearing and this hearing, now a year and a half later. Those procedures seem to me inexcusable. Inexcusable because it is set up to almost ensure the properly addressed mail doesn't get delivered just because it doesn't include some special kind

of notice. There should be some kind of system to direct mail to proper locations within the organization and you've offered me nothing. You've offered me nothing to indicate what, if any, procedures exist, other than that they don't exist.

MR. HELLMAN: Without the tension line, without the specific direction as to where the mail should go, there's no way for them to tell where it's supposed to go.

THE COURT: That's absolutely untrue. We live in a world of Google. We live in a world in which documents are routinely scanned into systems and with encryption software, people are able to write to almost every organization on the planet with not necessarily directions to send it to a particular office and for a little bit of investment, a big organization is able to deal with mail. If you were to write to the White House, Washington, D.C., with a letter of some complaint about what's going on in Washington right now, more likely than not that letter won't get to President Barrack Obama, but it will get to somebody who's responsible for dealing with it.

What is maddening to me -- and that's what makes your argument so difficult -- is that nobody opened the letter. Nobody opened the letter, thought about its contents, gave any consideration to what it said and attended to it. It's a sign of complete and utter

negligence. And it doesn't matter whether it's France, Germany, the United States or some other country on the planet, especially a large organization that presumes to act on behalf of third parties in a fiduciary capacity has an obligation to conduct itself at a higher level. This, to me, indicates complete and utter lack of attention to detail.

MR. HELLMAN: And so, how, then, Judge, do we set apart the National Union cases where this very situation occurred where mail was sent to a large organization -- a private organization, I might add, so it's probably a little bit easier for them to have some type of internal control -- and it's not addressed to -- but it's a specific attention line, and the Court in those cases said it doesn't constitute actual notice because it has to go to that specific address, to that specific attention line and it didn't.

And in those cases, the Court said the notice was not quote, unquote, actual notices for purposes of the bar date. We're talking about a very similar, if not the same exact situation here, and I understand the Court's criticism of CDC. Perhaps there's something that CDC could do, should have done, I'm not sure, Judge. They have a massive quasi-governmental agency where, you know, they have whatever implementation or policies they have with respect to mail,

again, which is why they have these specific, very specific addresses in all of their agreements, and if they don't have that specific address in that specific agreement, it's going to be in some sort of central, lost in the sauce, mailroom, if you will, and they're going to say, where do we send it? We don't really know. It doesn't have the attention line, it's going to get returned to sender and then maybe sender will then say I'm going to send it back.

I'm going to say, you know, why'd this come back to me? And I think there's no effort on epic's part or debtor's part to say why'd this come back, let's see if we have a correct address. Let's see -- you know, we know we're sending mail to this address attention this back office, but we didn't do it on this envelope, so let's resend it, but that didn't happen either.

I understand that there's issues on each side of the case, but the case law, per National Union, says, well, if you contract for a specific notice at a specific location using a specific attention line, that you're entitled to get notice at that specific address with that specific attention line, and if you don't, it's not actual notice and that's really where we come out, Judge. And to the extent that there's a known creditor, publication is not going to help and to the extent that they're going to send it to other places where these entities aren't involved in the

transaction and there's a specific days agreement that controlled substance where notices are supposed to go, that doesn't constitute actual notice and that's really where we come out, Judge.

THE COURT: That's pretty much the same argument that was made the last time, though, and I still don't understand why you haven't been able to supplement with more information about your client's diligence and attention to this particular transaction because to the extent that we're going to the question of excusable neglect -- and let's just say that's where we're going, let's say for the sake of a hypothetical --

MR. HELLMAN: Sure.

THE COURT: -- that the document in question, the notice of the bar date was addressed exactly in accordance with the ISDA agreement, was delivered to the mailroom and one of two things happened. Either the mailroom mistakenly sentenced it to the wrong department where it is buried in a stack of papers and nobody attends to it or it is sent to the right department and somebody gets the document and then forgets to deal with it, just forgets it or there's some personal emergency and that person leaves the office for six months and misses the bar date. In that instance, no issue of notice, it's an issue of excusable neglect.

Here, what's your excusable neglect argument?

MR. HELLMAN: Well, I think it's different than the hypotheticals than Your Honor has posed.

THE COURT: But you're talking to me about a three-million dollar claim --

MR. HELLMAN: Yes, Judge.

THE COURT: -- almost five and a half years into the Lehman case. It's almost December. We're two years -- we're about two years after the confirmation of the plan and more than five years after the commencement of the case and everybody in the world knows that Lehman went into bankruptcy. I don't think that there's a person alive in any civilized jurisdiction who doesn't know that fact.

MR. HELLMAN: That's probably true.

THE COURT: And so all kinds of people all over this organization in France, speaking French, admittedly, some speaking English, I'm sure.

MR. HELLMAN: Yes, that's how they're communicating with us at the higher level, yes.

THE COURT: And so they know that there's a bankruptcy and they know that they've terminated a swap agreement. I don't understand and it's one of the things that I was asking for last time, who was responsible for this?

MR. HELLMAN: And again, I don't think it's any one particular individual in terms of who's responsible.

THE COURT: It could be a group responsible for it. For example, I had an accident, it was insured, and I had a claim number and every time I called the insurance company somebody else picked up the file just by coding in the claim.

So can be a group that's responsible for the management of certain matters; it doesn't have to be one person. Presumably, they're people that are all part of some organized group that has managements and procedures and tickler lists and follow-ups and things that people in offices are familiar with to avoid malpractice and it seems to me that this is a situation of gross negligence.

MR. HELLMAN: Well, as much as we dug to try and find out that answer for the Court, there was no real answer to that specific individual who's responsible for the ISDA agreement.

THE COURT: So let's just say for the sake of discussion that a properly addressed letters gets delivered to the department that is referenced in the special address line of the ISDA agreement. I presume there are a suite of offices and that there's a door or there's a cubicle or a set of cubicles and that there are people who work in a particular department of the organization responsible for managing derivative trades and derivative transactions; is there such a department?

MR. HELLMAN: I don't know if there's such a department, but there are -- set forth in the papers, there is the legal department, the financial department, and the mailroom that deals with these -- well, the mailroom is its own separate, you know, large-scale mailings.

THE COURT: I'm not talking about the mailroom, right now. I'm talking about the people who are charged with the responsibility to monitor performance under derivative transactions.

MR. HELLMAN: I'm sure there are -- there are departments, and I know that, again, counsel, for the debtors has included in one of its submissions, the letters written by the people who decided, you know what, there's a bankruptcy, you're in default under the ISDA agreement, we're, you know, we're calling default.

Yes, from there, Judge, in terms of who monitors and who follows and what happens, do they go to the mailroom where there's a thousand pieces of mail being delivered and say, did I get notice of the bar date or did I get some notice from Lehman? You know, I'm sure it doesn't happen that way.

THE COURT: No, I'm not asking --

MR. HELLMAN: Is anybody responsible for following the bankruptcy?

THE COURT: I'm not actually asking that question.

The question I'm asking has nothing to do with supervision of the mailroom by either the legal department or people who work in the finance department.

MR. HELLMAN: Right.

THE COURT: But rather people who work in the legal department and the finance department who have it within their assigned responsibility making sure that these transactions are properly handled and presumably, although nobody has told me this, at the time that Lehman went into bankruptcy, certain people who speak English and who understand derivative transactions wrote the letters that have been cited to me by the debtor and they were cited to me because they are written in English and they are written in good English, apparently by someone familiar with the protocol for terminating transactions of this sort.

So someone made the business decision to terminate. What happened next? Who, if anybody, took responsibility for the resulting claim? Who, if anybody, monitored the Lehman bankruptcy? Who, if anybody, engaged counsel or chose not to engage counsel to deal with this issue? In other words, the question on the floor has less to do with mail and more to do be management or mismanagement, as the case may be.

MR. HELLMAN: And I don't know that we were able to locate any particular voyage who said they were

particularly responsible for following up in the context of the bankruptcy case, and I understand the Court's inquiry, and I don't mean to make light of it, but in a Chapter 11 situation, they, under the prevailing law don't necessarily have to, right? They don't have to say, well, where's my bar date notice? Or pick up the phone and say, what's going on with the bankruptcy? In a Chapter 11 it's presumed that the debtor has the obligation to provide whatever the applicable notice is.

And I understand the Court's view on the issue.

THE COURT: Well, what I'm searching for, as I did about a year and a half ago, is something that shows more than has already been shown that goes to the question of performance and excuse and to simply say that we didn't know takes you only so far when a properly addressed letter was delivered and then not properly processed.

MR. HELLMAN: Well, and I guess the question comes, what's properly addressed? Yes, it was addressed to the location.

THE COURT: It was received.

MR. HELLMAN: It was received, but it sufficiently addressed such that it would have made its way to the proper location.

THE COURT: It would have -- it would have presumably, if the mailroom opened the letter instead of

stamping it return to sender and then hand delivered the contents to a supervisor or some employee that had the capacity to direct the letter within the organization to a place that would deal with so much things, like a help desk, the kinds of things that people who deal with large organizations expect all the time, just mature user-friendly behavior in a commercial world that's largely linked.

And you've said nothing to indicate that the mailroom did anything other than act mechanically and without thought.

MR. HELLMAN: And I don't mean to degrade those who are working in the mailroom, but I don't know that they have any authority to do anything other than try to find the correct location, and if they can't without opening the mail, because that's not their charge, they have to send it back, return to sender, and I would have hoped, also, that the debtor would have said, gee, you didn't get notice of my bar date at this address and double-check it and see that they've sent this mail to a particular -- to that address, but to a particular attention line and send it back. Make another effort.

THE COURT: Why don't we hear what Mr. Horwitz has to say about this situation and then if you have more, we can come back.

MR. HELLMAN: Thank you, Judge.

MR. HORWITZ: Good morning, Your Honor.

Maurice Horwitz from Weil Gotshal & Manges.

THE COURT: It's the afternoon.

MR. HORWITZ: I'm sorry, afternoon.

It's all a blur to me at this point, Your Honor.

THE COURT: Right.

MR. HORWITZ: On behalf of the plan administrator, Your Honor, I have prepared remarks for this hearing but the Court has really already pointed out most of what I was going to say. This Court already denied the motion that was filed, now it's almost four years ago and there isn't very much in the second motion that has added to that first motion. So while I could point out that the debtor's notice of the bar date was sufficient, as this Court has pointed out, it was sufficient on due process grounds. It was sufficient under the bankruptcy rules, most importantly, it was perfectly in accordance with the bar date order. The purpose of which was, in part, to establish some -- with some certainty what proper notice of the bar date would be.

CDC had its address listed on the debtor's schedules and the debtors served notice of the bar date on that address. There is nothing about the master agreement that trumps this Court's -- the bar date order in this case.

THE COURT: What's your position on the National Union case that has been cited by CDC?

MR. HORWITZ: Well, that is the big -- that is the main distinguishing factor between this case and the National Union cases. There wasn't, in those cases, an order already determining and establishing what proper notice is. There is that order here. That order was entered well before or well after the CDC had terminated its contract with LBSF. CDC had always had the opportunity to correct the debtors' schedules. It was actually CDC's responsibility to do so. It did not do so.

In addition, Your Honor, those cases deal with providing notice of the commencement of an individual's Chapter 7 case to National Union. There's no way that this subsidiary of AIG would ever have known that one individual's Chapter 7 had been commenced and that is really another reason why it was appropriate for National Union to an another opportunity to point out in those cases that a certain debt was not dischargeable.

Here, it is established that CDC knew about the bankruptcy and reacted to the bankruptcy by terminating its contract with LBSF. The National Union cases are completely absent in this situation.

I don't have anything further to add unless the Court has any questions?

THE COURT: I don't.

Anything more?

MR. HELLMAN: No, Your Honor.

THE COURT: Nothing's really changed between the first motion by CDC for an order permitting a late-filed proof of claim and this second motion and for the very same reasons articulated on the record last time, the Court finds that no cause has been shown to permit a late-filed claim.

CDC is a large and sophisticated organization described by counsel as a quasi-governmental enterprise that is purportedly is responsible for the administration of the pension funds of French civil servants. The letter that were exchanged shortly after the commencement of the bankruptcy case in September of 2008 demonstrate a level of sophistication on the part of CDC comparable to that of other counterparties to derivative transactions, many of whom exercised the right to seek early termination of these transactions in September. The correspondence demonstrates that someone in authority had to have been thinking about this transaction at the time of termination and was aware of the Lehman bankruptcy, not only aware of it, but taking action in response to it.

The letter containing the notice of bar date admittedly was received by CDC at an address contained within the ISDA agreement. The only thing missing being the special address provision that according to CDC would have enabled the mailroom to deliver the proof of claim to the

department or departments within CDC responsible for this transaction.

Nonetheless, in both the first motion and the second motion, no evidence has been presented as to the individuals who work within this department, their responsibilities within CDC, where they sit, whether in the finance group or in the legal department, whether they are still employed by CDC and what, if any, diligence or action was taken by any of these individuals in recognition of the Lehman bankruptcy claims.

The fact that this letter containing the notice of bar date was in fact delivered to the mailroom and then mishandled there represents adequate notice of the bar date consistent with the bar date order. Nothing has been presented in the second motion to explain why CDC did nothing to protect its interests after terminating this derivative transaction. That lack of evidence makes it easy for the Court to deny the second motion this time with prejudice.

We're adjourned.

(Whereupon these proceedings were concluded at 2:49 p.m.)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri Breach

Digitally signed by Sherri Breach
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